

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*

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 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1999.

#### **H. Vann Weaver,**

*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-041-FOR]

#### **Texas Regulatory Program**

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

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

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to

the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposes to add revegetation success and normal husbandry practice guidelines to its program. Texas intends to revise its program to ensure that adequate data collection methods are used for determining revegetation success for purposes of releasing reclamation performance bonds and to ensure that the husbandry practices used by the permittee during the period of responsibility for revegetation success and bond liability are normal husbandry practices within the region for unmined lands.

This document gives the times and locations that the Texas program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we follow for the public hearing, if one is requested.

**DATES:** We will accept written comments until 4 p.m., c.d.t., July 1, 1999. If requested, we will hold a public hearing on the amendment on June 28, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on July 16, 1999.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

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

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 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, Capitol Station, 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.  
Internet: mwolfrom@tokgw.osmre.gov.

#### **SUPPLEMENTARY INFORMATION:**

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

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

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

By letter dated May 13, 1999 (Administrative Record No. TX-649), Texas sent us an amendment to its program under SMCRA. Texas sent the amendment at its own initiative. The amendment includes a guidance document on the procedures and standards for determining revegetation success on surface-mined lands in Texas and a guidance document on the normal husbandry practices that permittees are to use during the period of responsibility for revegetation success and bond liability (extended responsibility period). Below is a summary of the two documents. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

##### *1. Revegetation Success Guidelines: Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas*

Texas is proposing a guideline document that describes the procedures and standards for determining revegetation success on reclaimed surface mined lands in Texas.

a. Section I contains introductory information. Revegetation success must be demonstrated by using the revegetation standards and statistically valid sampling techniques for measuring success contained in the proposed guideline document. The use of the methods contained in this guidance document by mining companies operating in Texas will provide assurance that adequate data collection methods have been used for determining revegetation success for purposes of releasing reclamation performance bond funds. Mining companies may propose alternative procedures for sampling and analysis of vegetation data. However, the use of alternative methods must be approved by Texas, and the alternative methods must be included in the approved regulatory program.

b. Section II describes the regulatory requirements for meeting revegetation

success under the Texas Surface Coal Mining and Reclamation Act at sections 134.041, .092(a)(19) and (20), and .104 and the implementing performance standards for revegetation success in the Texas Coal Mining Regulations at Title 16, Texas Administrative Code (TAC) 12.390 through 12.395, and 12.399.

c. Section III identifies specific concepts and requirements to be followed in developing revegetation evaluation plans.

d. Section IV provides the approved methods for implementing the various evaluation methods for ground cover, productivity, and woody-plant stocking, including the proper selection of observation points. Measurement methods are presented for all vegetation parameters. Measurement results must be compared to either approved reference areas or technical success standards. Subsection A provides information on the selection of observation points for collecting vegetation data. Subsection B provides guidance on adjusting for field conditions when conducting vegetation surveys. Subsection C provides guidelines for ground cover measurements. Subsection D contains guidance for measurement of productivity. Subsection E provides guidelines for woody plant stocking. Subsection F contains guidance on selecting and management of reference areas.

e. Section V lists the revegetation success standards for each land use type and provides information on determining productivity of the reclaimed areas. Nine general types of land use are included: grazingland, pastureland, cropland, forestry, fish and wildlife habitat, undeveloped land, industrial/commercial, residential, and recreation. Subsection A provides guidelines relating to ground cover and productivity standards for grazingland and pastureland. Subsection B contains guidance on the ground cover and productivity standards for cropland. Subsection C provides guidelines on the ground cover standards and woody-plant stocking rates for the forestry land use category. Subsection D contains guidance on ground cover standards and woody-plant rates for fish and wildlife habitat. Subsection E provides guidelines on ground cover standards and woody-plant stocking rates for undeveloped land. Subsection F includes guidelines relating to ground cover standards and woody-plant stocking rates for industrial/commercial land uses. Subsection G provides guidance on ground cover standards and woody-plant stocking rates for residential land uses. Subsection H

contains guidelines on ground cover standards and woody-plant stocking rates for recreation land uses.

Subsections A through H include the steps to be followed for measurement and statistical comparison when either reference areas or technical standards are used as a measure for revegetation success. These subsections also contain information on evaluating ground cover measurements in conjunction with the species composition, when applicable.

f. Section VI provides a listing of the literature used in developing the proposed guideline document. Appendix A contains the statistical information, including equations and tables, to be used in the determination of revegetation success for ground cover, productivity, and woody-plant stocking. Appendix B provides a table summarizing the revegetation success standards for all land uses. The table in Appendix B includes the revegetation parameters, performance standards, and conditions for bond release relating to each land use. Appendix C contains examples of revegetation success determinations for ground cover, productivity involving herbaceous biomass, and woody plant stem counts. Attachment 1 is a document entitled "The Development of the Forage Production Standards for Post Mine Soils" by the United States Department of Agriculture—Natural Resources Conservation Service (USDA—NRCS). Attachment 2 is a document entitled "Texas Parks and Wildlife Department Recommendations for the Development of Success Standards for Woody-Plant Stocking Rates." Attachment 3 is a document entitled "Texas Forest Service Recommendations for Reforestation of Pine and Hardwoods in Texas."

#### *2. Guidelines for Normal Husbandry Practices for Surface-Mined Lands in Texas*

Texas is proposing a guideline document that describes the husbandry practices to be used by the permittee during the period of responsibility for revegetation success and bond liability. These practices are normal husbandry practices within the region for unmined lands.

a. Section I contains introductory information. The guideline document includes the normal husbandry practices that permittees must use for disease and pest control, application of fertilizers, application and incorporation of other soil amendments, and any other necessary soil vegetation management activities on surface-mined lands in Texas during the extended responsibility period. Husbandry

practices not included in this document may be considered augmentative in nature and, if performed on land that is currently in the extended responsibility period, may restart that period. The decision whether a particular activity can be classified as a normal husbandry practice will depend both on the regulatory requirements of the Texas Coal Mining Regulations and the postmining land use. Texas discusses its regulatory requirements in section II of the document.

b. Section III describes the conventions for normal husbandry practices. Texas lists the following three conventions regarding normal husbandry practices for surface-mined lands in Texas:

1. Normal husbandry practices are region-specific and include activities performed by landowners managing lands not disturbed by mining activities.
2. Normal husbandry practices are those activities that can be expected to continue as part of the postmining land use.
3. Discontinuance of the husbandry practices will not reduce the probability of revegetation success.

Texas also provides examples of the applicability of the conventions listed in items 1 and 3.

c. In section IV, Texas proposes normal husbandry practices for six vegetative community postmining land uses defined in the Texas program: grazingland, pastureland; cropland; forestry; fish and wildlife habitat; and undeveloped land. The normal husbandry practices listed for grazingland, pastureland, cropland, forestry, and fish and wildlife habitat are divided into three general categories: general management of soil and vegetation; addition of plant nutrients and other soil amendments; and pest management. Reference documents defining the normal husbandry practices for each category are listed. Texas submitted copies of these reference documents to support its proposed practices for disease and pest control, application of fertilizers, application and incorporation of other soil amendments, and other necessary soil vegetation management activities on surface-mined lands. Because the definition of undeveloped land excludes any type of management inputs during the extended responsibility period, Texas is only allowing limited erosion repair for this land use.

d. In section V, Texas provides guidelines for erosion repair, other damage repair, reseeding areas, overseeding, and restocking of woody species. Texas also included a provision for regrading and revegetation of areas

where temporary structures have been removed.

Texas may consider repair of erosion or other types of damage as a normal husbandry practice, provided that the damage is not caused by a lack of planning, design, or implementation of the mining and reclamation plan. The total acreage of repaired areas cannot exceed three contiguous acres or ten percent of the total land of the extended responsibility area. In cases of erosion, repairs may be considered non-augmentative if rill and gully damage was caused by precipitation exceeding a 10-year/24-hour event or damage occurred before the first two years of a 5-year extended responsibility period (areas with annual precipitation >26 inches) or four years of a 10-year extended responsibility period (areas with annual precipitation ≤26 inches). After the first two or four years, whichever is applicable, total acreage for erosion repair cannot exceed one contiguous acre or two percent of the total land of that extended responsibility area.

Texas will determine whether or not regrading and revegetation of areas where temporary structures such as sediment ponds, roads, and small diversions have been removed are non-augmentative on a case-by-case basis. Areas that may pose significant potential for reclamation problems will require a separate extended responsibility period.

Overseeding of winter cover crops and/or summer annuals, into existing vegetation, is considered a normal husbandry practice. Restocking of woody species is allowed, as long as the time and quantity of restocking is in compliance with Texas' regulations at 16 TAC 12.395(b)(3)(B).

Reference documents defining the normal husbandry practices relating to general management, addition of plant nutrients and other soil amendments, and pest management for erosion repair and reseeded areas are listed in this section. Texas submitted copies of these reference documents to support these practices.

e. In section VI, Texas lists those activities that are considered unacceptable husbandry practices. The activities include: reseeded areas devoid of vegetation due to acid mine soils; irrigation; supplemental watering of herbaceous vegetation and supplemental watering of large woody stock later than two years after planting; all application and incorporation of alkaline amendments, except for non-excessive application; and excessive application of plant nutrients.

If any of the listed practices are performed, the extended responsibility period for the affected areas will restart. Texas does not consider practices required to address problems that arise from mining-related activities as normal husbandry practices. Texas will use information from field inspection reports and mine-soil chemical analysis data to evaluate unacceptable husbandry practices or augmentation.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Texas program.

#### Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under DATES or at locations other than the Tulsa Field Office.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under FOR FURTHER INFORMATION CONTACT by 4 p.m., c.d.t. on July 16, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under FOR FURTHER INFORMATION CONTACT. We will not hold the hearing if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us 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. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

#### Public Meeting

If only one person requests an opportunity to speak at a hearing, we may hold a public meeting, rather than a public hearing. If you wish to meet

with us to discuss the amendment, request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under ADDRESSES. We will also make a written summary of each meeting part of the Administrative Record.

### IV. Procedural Determinations

#### Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review 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 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 State regulatory programs and program amendments 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

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on 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. Therefore, this rule will ensure that existing requirements previously published 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*

OSM has determined and certifies under 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 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1999.

#### **Brent Wahlquist,**

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

[FR Doc. 99-13809 Filed 5-28-99; 8:45 am]

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## **DEPARTMENT OF DEFENSE**

### **Department of the Air Force**

#### **32 CFR Part 884**

RIN 0701-AA59

#### **Delivery of Personnel to United States Civilian Authorities for Trial**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Air Force is revising 32 CFR Part 884, Delivery of Personnel to United States Civilian Authorities for Trial of the Code of Federal Regulations to reflect current policies. Part 884 is the Air Force Instruction establishing procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for trial or specified court appearances. It updates the process for delivery of personnel to civilian authorities for trial.

**DATES:** Written comments must be received by August 2, 1999.

**ADDRESSES:** Send written comments to: Lt. Col. Tom Jaster, AFLSA/JAJM, 112

Luke Avenue, Suite 343, Bolling Air Force Base, DC 20332-8000, 202-767-1539.

**FOR FURTHER INFORMATION CONTACT:** Lt. Col. Tom Jaster, AFLSA/JAJM, 202-767-1539.

**SUPPLEMENTARY INFORMATION:** Part 884 implements Department of Defense (DoD) Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, December 27, 1988 and AFPD 51-10, Making Military Personnel, Employees, and Dependents Available to Civilian Authorities.

(Authority: 10 U.S.C. 814, 10 U.S.C. 8013; Sec. 721(a) Pub. L. 100-456, 102 Stat. 2001)

#### **List of Subjects in 32 CFR Part 884**

Courts, Government employees, Law enforcement, Military personnel.

For the reasons set forth in the preamble, the Department of the Air Force proposes to revise 32 CFR Part 884 as follows:

#### **PART 884—DELIVERY OF PERSONNEL TO UNITED STATES CIVILIAN AUTHORITIES FOR TRIAL**

Sec.

- 884.0 Purpose.
- 884.1 Authority.
- 884.2 Assigned responsibilities.
- 884.3 Placing member under restraint pending delivery.
- 884.4 Release on bail or recognizance.
- 884.5 Requests under the interstate agreement on Detainer's Act.
- 884.6 Requests by Federal authorities for military personnel stationed within the United States and its possessions.
- 884.7 Requests by state and local authorities when the requested member is located in that state.
- 884.8 Request for delivery by state authorities when the member is located in a different state.
- 884.9 Requests for custody of members stationed outside the United States.
- 884.10 Returning members, employees, and family members from overseas.
- 884.11 Procedures for return of an Air Force member to the United States.
- 884.12 Delays in returning members to the United States.
- 884.13 Denials of a request for return of a member to the United States.
- 884.14 Compliance with court orders by civilian employees and family members.
- 884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.
- 884.16 Reporting requests for assistance and action.
- 884.17 Commander's instruction letter to member.
- 884.18 Civilian authority's acknowledgment of transfer of custody and agreement to notify member's commander.

**Authority:** 10 U.S.C. 814; 10 U.S.C. 8013; Sec. 721(a), Pub. L. 100-456, 102 Stat. 2001.

#### **§ 884.01 Purpose.**

This part establishes procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for trial or specified court appearances. It implements 32 CFR part 146. This part does not confer any rights, benefits, privileges, or form of due process procedure upon any individuals.

#### **§ 884.1 Authority.**

A general court-martial convening authority (GCMCA) may authorize delivery of a member of that command to Federal or state civil authorities. The GCMCA may delegate this authority to an installation or equivalent commander. See AFPD 51-10, Making Military Personnel, Employees, and Dependents Available to Civilian Authorities,<sup>1</sup> paragraphs 8 and 9, for sources of authority.

#### **§ 884.2 Assigned responsibilities.**

(a) The Under Secretary of Defense (USD), Personnel & Readiness (P&R), is the denial authority for all requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(e).

(b) The Air Force Judge Advocate General (TJAG) may approve requests that fall under § 884.9(e) or recommend denial of such requests. TJAG or a designee may approve or deny:

(1) Requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(f).

(2) Requests for delays of up to 90 days in completing action on requests for return of members to the United States for delivery to civilian authorities.

(c) The Air Force Legal Services Agency's Military Justice Division (HQ AFLSA/JAJM), 172 Luke Avenue, Suite 343, Bolling AFB, DC 20332-5113, processes requests for return of members to the United States for delivery to civilian authorities and notifies requesting authorities of decisions on requests. HQ AFLSA/JAJM completes action on requests within 30 days after receipt of the request, unless a delay is granted; they send all reports and notifications to USD/P&R and to the DoD General Counsel (DoD/GC), as required by this part; and they handle all communications with requesters.

<sup>1</sup> Air Force publications may be obtained through NTIS, 5285 Port Royal Road, Springfield, VA 22161, if not available online at <http://afpubs.hq.af.mil>.