

(1) Allowing lessees who sell their production to an affiliate the option (for a 2 year period) of basing the royalty value on either a published index price for gas or their affiliate's arm's-length resale price, (2) using NYMEX prices at the Henry Hub rather than published spot prices for natural gas, (3) adjusting natural gas index prices for location differences between the index pricing point and the lease, (4) revising the specific transportation costs that we identified in MMS's 1998 amendment to the gas transportation allowance regulations, (5) determining the rate of return allowed for calculating actual costs under non-arm's-length transportation agreements, (6) allowing lessees to apply natural gas index prices to wellhead gas volumes to eliminate the current requirement of tracing gas that is processed to remove natural gas liquids, and (7) valuing and reporting natural gas disposed of under joint operating agreements.

In addition to the specific issues identified above, we encourage participants to comment on any other significant issues impacting the value of natural gas for royalty purposes.

The workshops will be open to the public without advance registration. Public attendance may be limited to the space available. We encourage a workshop atmosphere; members of the public are encouraged to participate.

For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: March 31, 2003.

**Lucy Querques Denett,**

*Associate Director for Minerals, Revenue Management.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

[TX-043-FOR]

#### Texas Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program)

under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes to add a new rule to its administrative hearing procedures concerning telephonic hearing proceedings. Texas intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Texas program and proposed 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 will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.s.t. May 12, 2003. If requested, we will hold a public hearing on the amendment on May 5, 2003. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on April 25, 2003.

**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, this 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 Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430, Internet address: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov).

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 address: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

#### I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and

reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

#### II. Description of the Proposed Amendment

By letter dated February 12, 2003 (Administrative Record No. TX-654), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative. Texas is proposing to add Texas Administrative Code (TAC) 1.130 to Title 16, Subchapter G, of the Railroad Commission of Texas' (Commission) General Rules of Practice and Procedure (GRPP). This new rule contains the procedures for conducting all or part of a prehearing conference or hearing by telephone. Below is a summary of the new rule proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. Texas' new rule at 16 TAC 1.130 outlines the method to request a telephonic proceeding, how the proceeding will be conducted, the establishment of the record in such proceedings, and the grounds for a default judgment or a dismissal.

1. Section 1.130(a) allows the hearings examiner, on the timely written motion of a party or on the examiner's own motion, to conduct all or part of a prehearing conference or hearing by telephone. All parties must consent to the telephonic proceeding.

2. Section 1.130(b) requires a written request that is filed at the Commission and served on all parties. The request must include the pertinent telephone number(s), the scope of the telephonic portion of the proceeding, and the identity of any witnesses that may testify telephonically. If expert

witnesses will testify, the request must include their qualifications to testify as experts.

3. Section 1.130(c) requires the hearings examiner to ensure that the proceeding is fair and provides due process. In determining if it is feasible to conduct all or part of a proceeding telephonically, the hearings examiner must take into account the following factors: (1) Timeliness of a party's request; (2) receipt of written agreements from all parties to conduct all or part of the proceeding by telephone; (3) demonstrations from the parties on how witnesses will be separated, how coaching of witnesses will be prevented, why observing only a witness's oral demeanor is sufficient, and how the witnesses' and parties' identities will be established; (4) the number of parties and the number of witnesses; (5) the number and type of exhibits; (6) the distance of the parties or witnesses from Austin; (7) the nature of the hearing; and (8) any other pertinent factors which the hearings examiner believes may affect the proceeding.

4. Section 1.130(d) requires the hearings examiner to notify the parties, not less than ten days before the proceeding, of his or her decision to conduct all or part of a proceeding telephonically.

5. Section 1.130(e) requires the parties to file and serve all documentary evidence, other than prefiled written testimony, in advance of the proceeding.

6. Section 1.130(f) specifies that, subject only to the limitation of the physical arrangement, all substantive and procedural rights apply to telephonic proceedings.

7. Section 1.130(g) requires that the time and location of telephonic proceedings be posted. Any person may, by advance request, be present in the room with the hearings examiner.

8. Section 1.130(h) requires the hearings examiner to conduct telephonic proceedings using a speaker telephone. The hearings examiner must make a tape recording of the telephonic proceeding, or arrange to have the proceeding recorded by a court reporter.

9. Section 1.130(i) requires the hearings examiner to initiate the telephonic proceeding, including arranging any necessary conference call. When all parties appearing telephonically are connected, the hearings examiner will affirm the parties' consent to the telephonic proceeding. The hearings examiner will then call the proceeding to order; ask all parties to identify themselves, their locations, and their witnesses; affirm on the record the prior written agreement

from all parties consenting to the telephonic appearance or proceeding; and state whether the proceeding is being tape recorded or whether a court reporter is recording the proceeding. The hearings examiner will administer the oath to each witness individually before his or her testimony.

10. Section 1.130(j) provides that if the hearings examiner is prevented from connecting all parties through circumstances that are beyond the control of any party or the examiner, the examiner may postpone, continue, or recess the proceeding, as appropriate, until the earliest possible date and time for the proceeding to be reconvened.

11. Section 1.130(k) provides that if the hearings examiner decides or any party requests not to proceed with the telephonic proceeding at any time, or asserts that the presence of the parties or witnesses in the hearing room is necessary for full disclosure of the facts, the hearings examiner may postpone, continue, or recess the proceedings, as appropriate. The hearings examiner must reschedule the proceedings to the earliest possible date and time. The examiner must state on the record or in writing to all parties the reasons for terminating the telephonic proceeding and state the date, time, and location of the reconvened proceeding.

12. Section 1.130(l) provides that the Commission may consider the following events to constitute a failure to appear and grounds for default or dismissal: (1) Failure to answer the telephone for more than 10 minutes after the scheduled time for the proceeding; (2) failure to free the telephone for the proceeding for more than 10 minutes after the scheduled time for the proceeding; (3) failure to be ready to proceed with the proceeding within 10 minutes of the scheduled time; and (4) a party's intentional disconnection from the conference call.

13. Finally, Section 1.130(m) specifies that in the event of accidental disconnection of one or more parties to the proceeding, the hearings examiner will immediately recess the hearing and attempt to re-establish the connection or connections. If reconnection is achieved within 30 minutes, the hearings examiner may resume the telephonic hearing, or may postpone, continue, or recess the proceedings, as appropriate, until the earliest possible date and time for the proceeding to be reconvened. The examiner must state on the record the date, time, and location of the reconvened proceeding. If reconnection cannot be achieved, then the hearings examiner must recess the telephonic proceeding and reschedule the hearing.

### III. Public Comment Procedures

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

#### *Written Comments*

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

#### *Electronic Comments*

Please submit Internet comments as an ASCII or Microsoft Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: TX-043-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581-6430.

#### *Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

#### *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.s.t. on April 25, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the

hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be 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 everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please 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 make a written summary of each meeting a part of the administrative record.

#### **IV. Procedural Determinations**

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that 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 because 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 the Federal regulations at 30 CFR

730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally recognized Indian tribes.

##### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse

effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement because 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 certifies 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.*). This determination is based upon the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

##### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the telephonic hearing provisions proposed by Texas are

administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 27, 2003.

**Ervin J. Barchenger,**

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

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## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA28

#### Financial Crimes Enforcement Network; Anti-Money Laundering Program Requirements for "Persons Involved in Real Estate Closings and Settlements"

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** FinCEN is in the process of implementing the requirements delegated to it under the USA Patriot Act of 2001, in particular the requirement pursuant to section 352 of the Act that financial institutions establish anti-money laundering programs. The term "financial institution" includes "persons involved in real estate closings and settlements." FinCEN is issuing this advance notice of proposed rulemaking ("ANPRM") to solicit public comments on a wide range of questions pertaining to this requirement, including how to define "persons involved in real estate closings and settlements," the money laundering risks posed by such persons, and whether any such persons should be exempted from this requirement.

**DATES:** Written comments may be submitted on or before June 9, 2003.

**ADDRESSES:** Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov) with the caption in the body of the text, "ATTN: Section 352—Real estate settlements." Comments may also be submitted by paper mail to FinCEN, PO Box 39, Vienna, VA 22183-0039, "ATTN: Section 352 " Real estate settlements." Comments should be sent by one method only. Comments may be

inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. People wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Office of Chief Counsel, FinCEN, (703) 905-3590; Office of the General Counsel (Treasury), (202) 622-1927; or the Office of the Assistant General Counsel for Banking and Finance (Treasury), (202) 622-0480 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001 (Pub. L. 107-56) ("the Act"). Title III of the Act, also known as the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, made a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism.

Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution including persons involved in real estate settlements and closings under section 5312(a)(1)(U) to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. When prescribing minimum standards for anti-money laundering programs, section 352 directs the Secretary of the Treasury to "consider the extent to which the requirements imposed under [section 352 of the Act] are commensurate with the size, location, and activities of the financial institutions to which such regulations apply." The Secretary has delegated the authority to administer the BSA to the Director of FinCEN.

On April 29, 2002, and again on November 6, 2002, FinCEN temporarily exempted certain financial institutions, including persons involved in real estate closings and settlements, from the

requirement to establish an anti-money laundering program.<sup>1</sup> The purpose of the temporary exemption was to enable Treasury and FinCEN to study the affected industries and to consider the extent to which anti-money laundering program requirements should be applied to them, taking into account the specific characteristics of the various entities defined as "financial institutions" by the BSA.

A real estate closing or settlement is the process in which the purchase price is paid to the seller and title is transferred to the buyer.<sup>2</sup> The process may be carried out in different ways, depending on a number of factors, including location. In the eastern states, typically the parties meet and exchange documents in what is sometimes referred to as a "New York style" or "table closing." In the western states, the parties may not meet, instead relying on the services on an escrow agent to handle the documents in what is sometimes referred to as a "Western style" or an "escrow closing."<sup>3</sup> The person actually conducting the process may be an attorney, a title insurance company, an escrow company, or another party.

##### II. Issues for Comment

###### 1. What Are the Money Laundering Risks in Real Estate Closings and Settlements?

The real estate industry could be vulnerable at all stages of the money laundering process by virtue of dealing with high value products.<sup>4</sup> Money launderers have used real estate transactions to attempt to disguise the illegal source of their proceeds. For example, narcotics traffickers have purchased property with monetary instruments that they purchased in structured amounts (that is, multiple purchases each below the BSA reporting thresholds that in aggregate exceeded

<sup>1</sup> See 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002), as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

<sup>2</sup> Whether the process is referred to as a settlement or a closing may vary by jurisdiction. See, e.g., 24 CFR 3500.2 explaining that settlement for purposes of the Real Estate Settlement Procedures Act of 1974 ("RESPA") may also be called a "closing" depending on the jurisdiction.

<sup>3</sup> See, 11 Thompson on Real Property, sec. 94.04.

<sup>4</sup> According to a report published by the National Institute of Justice, "real estate transactions offer excellent money laundering opportunities," and, in particular, opportunities to "legitimate and repatriate illegal funds." Barbara Webster and Michael S. McCampbell, National Institute of Justice, International Money Laundering: Research and Investigation Join Forces, September 1996, pages 5 and 6.