

temporary regulations (REG-116664-01), which was published in the **Federal Register** on Friday, December 19, 2003 (68 FR 70747), relating to the elimination of regulatory impediments to the electronic filing of certain business income tax returns and other forms.

**FOR FURTHER INFORMATION CONTACT:** Nathan Rosen at (202) 622-4910 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The notice of proposed rulemaking by cross-reference to temporary regulations that is the subject of these corrections is under section 170A of the Internal Revenue Code.

**Need for Correction**

As published, REG-116664-01 contains errors which may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (REG-116664-01), which is the subject of FR Doc. 03-31239, is corrected as follows:

**PART 1—INCOME TAXES**

**§ 1.1377-1 [Corrected]**

1. On page 70749, column 1, instructional paragraph Par. 9., line 2, the language “by revising paragraphs (b)(2)(iii),” is corrected to read “by revising paragraphs”.

**§ 1.1502-21 [Corrected]**

2. On page 70749, column 1, paragraph (b)(2)(iii), the language “[The text of the proposed amendments to § 1.1502-21(b)(2)(iii) is the same as the text of § 1.1502-21T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**].” Is corrected to read “(b) \* \* \*”.

3. On page 70749, column 1, the five asterisks following paragraph (b)(2)(iii) are removed.

**PART 301—PROCEDURE AND ADMINISTRATION**

4. On page 70749, column 3, instructional paragraph Par. 13., line 2, the language “301 continues to read as

follows:” is corrected to read “301 continues to read in part as follows:”.

**Cynthia E. Grigsby,**

*Acting Chief, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures & Administration).*

[FR Doc. 04-2077 Filed 2-2-04; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 943**

**[TX-051-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 revisions to and additions of regulations regarding coal combustion by-products and coal combustion products. Texas intends to revise its program to clarify how the use and disposal of coal combustion by-products and coal combustion products are regulated at coal mine sites in Texas.

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., March 4, 2004. If requested, we will hold a public hearing on the amendment on March 1, 2004. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on February 18, 2004.

**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 December 9, 2003 (Administrative Record No. TX-656), 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. Below is a summary of the changes proposed by Texas. The full text of the program amendment is

available for you to read at the locations listed above under **ADDRESSES**.

*A. 16 Texas Administrative Code (TAC) Section 12.3 Definitions*

Texas proposes to amend this section by adding new paragraphs (33) and (34) defining "coal combustion by-products" and "coal combustion products," respectively. Texas also proposes to renumber existing paragraphs (33) through (193) as paragraphs (35) through (195).

*B. 16 TAC Section 12.142 Operation Plan: Maps and Plans*

Texas proposes to add new paragraph (2)(L) to require that each permit application contain maps and plans of the proposed permit and adjacent areas which show the approximate location of any area in which coal combustion by-products will be disposed.

*C. 16 TAC Section 12.145 Reclamation Plan: General Requirements For Surface Mining*

Texas proposes to add new paragraph (b)(10) to read as follows:

(10) a description of any planned use of coal combustion products designed to achieve approximate original contour or any proposal to dispose of coal combustion by-products in a manner that achieves approximate original contour. When additional time to conduct rough backfilling and grading is requested to allow for the use of coal combustion products or the disposal of coal combustion by-products, the description shall include a planned time frame for those activities. The proposed time frame may include extensions of the time frames under § 12.384(a) of this title (relating to Backfilling and Grading: General Requirements) to facilitate the cost-effective utilization of coal combustion products and by-products considering generation rates, transportation issues, market conditions, and other relevant factors. Ancillary features (e.g., sediment control structures, roads, and other infrastructure) associated with the use of coal combustion products or coal combustion by-products shall be considered mining-related activities which the permittee may retain within the Commission's mining permit for the life of the reclamation project until final bond release.

*D. 16 TAC Section 12.187 Reclamation Plan: General Requirements For Underground Mining*

Texas proposes to add new paragraph (b)(10) to read as follows:

(10) a description of any planned use of coal combustion products designed to achieve approximate original contour or any proposal to dispose of coal combustion by-products in a manner that achieves approximate original contour. When additional time to conduct rough backfilling and grading is requested to allow for the use of coal combustion products or the disposal

of coal combustion by-products, the description shall include a planned time frame for those activities. The proposed time frame may include extensions of the time frames under § 12.551(a) of this title (relating to Backfilling and Grading: General Requirements) to facilitate the cost-effective utilization of coal combustion products and by-products considering generation rates, transportation issues, market conditions, and other relevant factors. Ancillary features (e.g., sediment control structures, roads, and other infrastructure) associated with the use of coal combustion products or coal combustion by-products shall be considered mining-related activities which the permittee may retain within the Commission's mining permit for the life of the reclamation project until final bond release.

*E. 16 TAC Section 12.197 Operation Plan: Maps and Plans*

Texas proposes to add new paragraph (2)(N) to require that each permit application contain maps and plans of the proposed permit and adjacent areas which show the approximate location of any area in which coal combustion by-products will be disposed.

*F. 16 TAC Section 12.384 Backfilling and Grading: General Requirements*

Texas proposes to revise paragraphs (a)(1) through (a)(4) to reference proposed new section 12.145(b)(10).

*G. 16 TAC Section 12.385 Backfilling and Grading: General Grading Requirements*

Texas proposes to add new paragraph (f) to read as follows:

(f) In the case of a reclamation plan in which coal combustion products are designed to achieve approximate original contour or coal combustion by-products are proposed to be disposed of in a manner that achieves approximate original contour, the following information shall be submitted as applicable:

(1) an affidavit from the generator certifying that any coal combustion products to be used are exempt from the definition of "solid waste" under 30 TAC § 335.1(131)(H) (relating to Definitions) or TCEQ letter-authorization as referenced in Table 1 of § 12.3(33) of this title (relating to Definitions);

(2) an affidavit from the generator certifying that any coal combustion by-product disposal operations are in compliance with 30 TAC § 335.2–335.8 (relating to Permit Required; Technical Guidelines; General Prohibitions; Deed Recordation of Waste Disposal; Notification Requirements; Financial Assurance Required; and Closure and Remediation) and 30 TAC Chapter 335, Subchapter R (relating to Waste Classification);

(3) documentation (e.g., a signed lease or an affidavit from the landowner) that the landowner has consented to the use of coal combustion products or the disposal of coal combustion by-products on the landowner's property;

(4) chemical analyses of a representative sample of any coal combustion products planned to be used or any coal combustion by-products proposed to be disposed; and

(5) an estimated timeframe for the use of coal combustion products or the disposal of coal combustion by-products as part of the timetable submitted under § 12.145(b)(1) of this title (relating to Reclamation Plan: General Requirements for Surface Mining).

*H. 16 TAC Section 12.552 Backfilling and Grading: General Grading Requirements*

Texas proposes to add new paragraph (f) to read as follows:

(f) In the case of a reclamation plan in which coal combustion products are designed to achieve approximate original contour or coal combustion by-products are proposed to be disposed of in a manner that achieves approximate original contour, the following information shall be submitted as applicable:

(1) an affidavit from the generator certifying that any coal combustion products to be used are exempt from the definition of "solid waste" under 30 TAC § 335.1(131)(H) (relating to Definitions) or TCEQ letter-authorization as referenced in Table 1 of § 12.3(33) of this title (relating to Definitions);

(2) an affidavit from the generator certifying that any coal combustion by-product disposal operations are in compliance with 30 TAC § 335.2 "335.8 (relating to Permit Required; Technical Guidelines; General Prohibitions; Deed Recordation of Waste Disposal; Notification Requirements; Financial Assurance Required; and Closure and Remediation) and 30 TAC Chapter 335, Subchapter R (relating to Waste Classification);

(3) documentation (e.g., a signed lease or an affidavit from the landowner) that the landowner has consented to the use of coal combustion products or the disposal of coal combustion by-products on the landowner's property;

(4) chemical analyses of a representative sample of any coal combustion products planned to be used or any coal combustion by-products proposed to be disposed; and

(5) an estimated timeframe for the use of coal combustion products or the disposal of coal combustion by-products as part of the timetable submitted under § 12.187(b)(1) of this title (relating to Reclamation Plan: General Requirements for Underground Mining).

### 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 Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: TX-051-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 February 18, 2004. 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*

The revisions made at the initiative of the State do not have Federal counterparts and have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions have no 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 (OMB) 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, and 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 the provisions in 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 provisions 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 government 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 State provisions 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 State provisions 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: December 30, 2003.

**Charles E. Sandberg,**

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

[FR Doc. 04-2130 Filed 2-2-04; 8:45 am]

BILLING CODE 4310-05-U

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

**RIN 1018-AT46**

**Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2005-06 Subsistence Taking of Fish and Shellfish Regulations**

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish regulations for fishing seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2005-06 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the fish and shellfish taking regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart DX—2004-05 Subsistence Taking of Fish and Wildlife Regulations," which expire on March 31, 2005. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of fish and shellfish.

**DATES:** The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 26, 2004. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule from February 23, 2004-March 26, 2004. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

**ADDRESSES:** Please submit proposals electronically to [Subsistence@fws.gov](mailto:Subsistence@fws.gov). See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for

additional information on locations of the public meetings.

**FOR FURTHER INFORMATION CONTACT:**

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786-3592.

**SUPPLEMENTARY INFORMATION:**

**Public Review Process—Regulation Comments, Proposals, and Public Meetings**

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council, Sitka, March 17, 2004.

Region 2—Southcentral Regional Council, Anchorage, March 9, 2004.

Region 3—Kodiak/Aleutians Regional Council, Larson Bay, March 18, 2004.

Region 4—Bristol Bay Regional Council, Naknek, February 26, 2004.

Region 5—Yukon-Kuskokwim Delta Regional Council, St. Mary's, March 3, 2004.

Region 6—Western Interior Regional Council, Ruby, March 9, 2004.

Region 7—Seward Peninsula Regional Council, Nome, February 18, 2004.

Region 8—Northwest Arctic Regional Council, Kotzebue, February 24, 2004.

Region 9—Eastern Interior Regional Council, Beaver, February 27, 2004.

Region 10—North Slope Regional Council, Barrow, March 3, 2004.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

Electronic filing of comments (preferred method): Please submit electronic comments (proposals) and other data to [Subsistence@fws.gov](mailto:Subsistence@fws.gov). Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

During May 2004, we will compile and distribute for additional public review the written proposals to change Subpart D fishing regulations and in Subpart C the customary and traditional use determinations. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on