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**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 943

[TX-052-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 policy document to its program that describes mine permit implementation actions that would not, in the opinion of the Railroad Commission of Texas (Commission), be considered permit revisions and are, therefore, not subject to Commission review and approval. 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., March 10, 2004. If requested, we will hold a public hearing on the amendment on March 5, 2004. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on February 24, 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 23, 2003 (Administrative Record No. TX-657), 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**.

Texas proposes to add a new policy document to its program that describes mine permit implementation actions that would not, in the opinion of the Commission, be considered permit revisions and are, therefore, not subject to Commission review and approval. If approved, the implementation of this policy will impact the way current mine permit applications are prepared and how revisions are processed.

#### 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-052-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 24, 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 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: January 20, 2004.

**Charles E. Sandberg,**

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

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 51, 72, 75, and 96**

[FRL-7619-9]

#### **Public Hearings for Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule) and Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rules; announcement of public hearings.

**SUMMARY:** In a **Federal Register** document published on February 2, 2004, EPA announced the dates and cities for three public hearings to be held jointly for two related proposals. Today's document provides the remaining details for the hearings, including the facility locations and daily schedules.

The public hearings are for the proposed "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule)" and the "Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units," which is also known as the proposed Utility

Mercury Reductions Rule. These proposals were published in the **Federal Register** on January 30, 2004.

**DATES:** The three 2-day public hearings will be held concurrently on February 25 and 26, 2004. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearings.

**ADDRESSES:** The hearings will be held at the following locations:

1. Hilton Chicago, 720 South Michigan Avenue, Chicago, Illinois 60605, phone 312-726-7500;
2. Wyndham Philadelphia at Franklin Plaza, 17th and Race Streets, Philadelphia, PA 19103, phone 215-448-2000;
3. Holiday Inn Raleigh-Durham Airport, 4810 Old Page Road, Research Triangle Park, NC, 919-941-6000.

Written comments on these proposed rules may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the proposals for the addresses and detailed instructions.

Documents relevant to this action are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through EPA's electronic Docket system at <http://www.epa.gov/edocket>.

The EPA Web sites for the rulemakings, which include the proposals and information about the public hearings, are at <http://www.epa.gov/interstateairquality> and <http://www.epa.gov/mercury>.

**FOR FURTHER INFORMATION CONTACT:** If you would like to speak at the public hearings or have questions concerning the public hearings, please contact JoAnn Allman at the address given below under **SUPPLEMENTARY INFORMATION**. Questions concerning the Interstate Air Quality Rule should be addressed to Scott Mathias, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C539-01), Research Triangle Park, NC 27711, telephone number (919) 541-5310, e-mail at [mathias.scott@epa.gov](mailto:mathias.scott@epa.gov). Questions concerning the Utility Mercury Reductions Rule should be addressed to William Maxwell, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Combustion Group (C439-01), Research Triangle Park, NC 27711, telephone number (919) 541-5430, e-mail at [maxwell.bill@epa.gov](mailto:maxwell.bill@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **The Proposed Rules**

The EPA's proposed Interstate Air Quality Rule would reduce emissions of sulfur dioxide and nitrogen dioxides in 29 eastern States and the District of Columbia that are significantly contributing to fine particulate matter and 8-hour ozone nonattainment problems in downwind States. Each State would be required to adopt control measures to meet specific statewide emission reduction requirements. The EPA believes that the most cost-effective way for States to achieve the required reductions would be to regulate utilities under a cap and trade program similar to EPA's highly successful Acid Rain Program. The proposed Utility Mercury Reductions Rule provides options that would reduce mercury emissions and would set a mandatory, declining cap on the total mercury emissions allowed from utilities nationwide. The proposal also would reduce nickel emissions from utilities. The EPA is coordinating these rulemakings to allow the emissions reductions to be achieved in the most cost-effective manner by sources affected by both actions.

### **Public Hearings**

The proposals for which EPA is holding the public hearings were published in the **Federal Register** on January 30, 2004 (69 FR 4566 for the Interstate Air Quality Rule and 69 FR 4652 for the Utility Mercury Reductions Rule) and are available on the Web sites listed under **ADDRESSES**. The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked by the last day of the comment period, as specified in the proposals.

The three 2-day public hearings will be held concurrently in Chicago, Illinois; Philadelphia, Pennsylvania; and Research Triangle Park, North Carolina. Each hearing will last two days and is scheduled for February 25 and 26, 2004. Persons wishing to present oral testimony for one or both proposals may speak on either day. The meeting facilities and their phone numbers are provided above under **ADDRESSES**.