

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. The rule does not involve or affect Indian Tribes in any way.

#### *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*

No environmental impact statement is required for this rule since agency decisions on proposed State regulatory programs and amendments thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

#### *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. 3501 *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.*). 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. 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.

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

This rule is not a major rule under 5 U.S.C. 804(2) of 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.

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 submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### *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 submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

#### **List of Subjects in 30 CFR Part 926**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 27, 2005.

**James F. Fulton,**

*Acting Regional Director, Western Region.*

[FR Doc. 05-23396 Filed 11-28-05; 8:45 am]

**BILLING CODE 4310-05-P**

## **DEPARTMENT OF THE INTERIOR**

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

#### **30 CFR Part 943**

**[Docket No. TX-055-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 and statutes regarding the State's annual fees that are required from coal mining permit holders. In addition to the current annual fee, Texas proposes to add two new annual fees. Texas intends to revise its program to reduce the economic cost to the coal mining industry as a whole and to require coal mining permit holders that have ceased mining to pay annual fees.

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.t., December 29, 2005. If

requested, we will hold a public hearing on the amendment on December 27, 2005. We will accept requests to speak at a hearing until 4 p.m., c. t. on December 14, 2005.

**ADDRESSES:** You may submit comments, identified by Docket No. TX-055-FOR, by any of the following methods:

- E-mail: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov). Include "Docket No. TX-055-FOR" in the subject line of the message.
- Mail/Hand Delivery: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547.
- Fax: (918) 581-6419.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to 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, you must go to the address 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. E-mail: [mwolfrom@osmre.gov](mailto:mwolfrom@osmre.gov).

In addition, you may review a copy of the amendment during regular business hours at the following location: Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-2967.

Telephone: (512) 463-6900.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581-6430. E-mail: [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 October 6, 2005 (Administrative Record No. TX-660), 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. Revisions to Texas' Statutes*

Section 134.055 of the Texas Natural Resources Code currently requires each permit holder to pay an annual mined acreage fee for each acre of land in the permit area on which the permit holder actually conducted operations for removing coal during the year. Presently, this fee cannot be less than \$120.00 per acre. Texas proposes to revise section 134.055 by eliminating the \$120.00 per acre minimum fee and allowing the Railroad Commission of Texas (Commission) to determine the amount of this fee. Texas also proposes to add two new annual fees; a mining permit fee for mining permits in effect at the end of a calendar year and a bond acreage fee for each acre of land in the bonded permit area. Texas proposes to allow the Commission to determine the amount of each of the two new annual fees.

#### **B. Revisions to Texas' Regulations**

Texas proposes to revise its regulations at 16 Texas Administrative Code (TAC) 12.108, regarding permit fees, to implement the above proposed statutory amendments.

Texas proposes to add the title, "Application Fees," and the title, "Annual Fees," to paragraph (a) and paragraph (b), respectively, and to require the fees due and payable no later than March 15th of the year following the year for which these fees are applicable.

Texas also proposes to reduce the current annual mined acreage fee from \$390.00 per acre to \$160.00 per acre for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year. In addition, Texas proposes to add a new bond acreage fee and proposes to set it at \$3.00 per acre for each acre of land within a permit area covered by a reclamation bond on December 31st of the year. Finally, Texas proposes to add a new mining permit fee and proposes to set it at \$3,550.00 for each permit in effect on December 31st of the year.

#### **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: Docket No. TX-055-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.t. on December 14, 2005. 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 analysis performed for the counterpart Federal regulation.

*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.*). 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. 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.

**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 submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

**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 submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 1, 2005.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Region.*

[FR Doc. 05-23402 Filed 11-28-05; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 950**

**[WY-033-FOR]**

**Wyoming Abandoned Mine Land Reclamation Plan**

**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 are announcing receipt of a proposed amendment to the Wyoming abandoned mine land reclamation (AMLR) plan (the "Wyoming plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes revisions and additions to its AMLR Plan to be consistent with SMCRA by removing phrases concerning liens for reclamation on private lands and by removing and adding words concerning contract eligibility.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.s.t., December 29, 2005. If requested, we will hold a public hearing on the amendment on December 27, 2005. We will accept requests to speak until 4 p.m., m.s.t., December 14, 2005.

**ADDRESSES:** You may submit comments, identified by "WY-033-FOR", by any of the following methods:

- E-mail: [rbuckley@osmre.gov](mailto:rbuckley@osmre.gov). Include "WY-033-FOR" in the subject line of the message.
- Mail/Hand Delivery/Courier: Richard W. Buckley, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, Wyoming 82601-1018. Telephone: 307/261-6550. E-mail: [RBuckley@osmre.gov](mailto:RBuckley@osmre.gov).
- Fax: 307/261-6552.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and SATS No. WY-033-FOR. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** Access to the docket (administrative record), to review copies of the Wyoming plan, 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 the Office of Surface Mining Reclamation and Enforcement (OSM) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations: Richard W. Buckley, Acting Director,

Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B Street, Room 1018, Casper, Wyoming 82601-1018. Telephone: 307/261-6550. E-mail: [RBuckley@osmre.gov](mailto:RBuckley@osmre.gov). Evan Green, AML Administrator, Wyoming Abandoned Mine Lands Program, Herschler Building, 4th Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002. Telephone: 307/777-6145. E-mail: [egreen@state.wy.us](mailto:egreen@state.wy.us).

**FOR FURTHER INFORMATION CONTACT:** Acting Field Office Director Richard W. Buckley. Telephone: 307/261-6550. E-mail: [RBuckley@osmre.gov](mailto:RBuckley@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Wyoming Plan**

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On February 14, 1983, the Secretary of the Interior approved the Wyoming plan. You can find general background information on the Wyoming plan, including the Secretary's findings and the disposition of comments, in the February 14, 1983, **Federal Register** (48 FR 6536). You can also find later actions concerning Wyoming's plan and plan amendments at 30 CFR 950.35 and outstanding required amendments at 30 CFR 950.36.

**II. Description of the Proposed Amendment**

By letter dated September 1, 2005, Wyoming sent us a proposed amendment to its plan (WY-033-FOR, administrative record No. WY-033-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to the required plan amendments at 30 CFR 950.36 (a) and (b). The full text of the plan amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Wyoming proposes to remove from Wyoming Statute (W.S.)