

*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 tribal AMLR plans and revisions 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 13.5(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 proposed rule, if adopted, would affect only the Crow Tribe and, as previously stated, would allow the tribe to request AMLR funds to pursue projects in accordance with section 411 of SMCRA.

*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. Based on the nature of the amendment submitted by the tribe, we have determined that the 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.

*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 on the nature of the amendment submitted by the tribe.

**List of Subjects in 30 CFR Part 756**

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: November 5, 2007.

**Louis Hamm,**

*Acting Regional Director, Western Region.*

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 943**

**[SATS No. TX-058-FOR; Docket ID: OSM-2007-0018]**

**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 its regulations regarding annual permit fees. 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:** Comments on the proposed rule must be received on or before 4 p.m., c.t., January 16, 2008, to ensure our consideration. If requested, we will hold a public hearing on the amendment on January 11, 2008. We will accept requests to speak at a hearing until 4 p.m., c.t. on January 2, 2008.

**ADDRESSES:** You may submit comments by either of the two following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule is listed under the agency name "OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT" and has been assigned Docket ID: OSM-2007-0018.

• *Mail/Hand Delivery:* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128-4629. Please include the Docket ID (OSM-2007-0018) with your comments.

If you would like to submit comments through the Federal eRulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and do the following. Find the blue banner with the words "Search Documents" and go to "Optional Step 2." Select "Office of Surface Mining Reclamation and Enforcement" from the agency drop-down menu, then click the "Submit" button at the bottom of the page. The next screen will have the title "Document Search Results." The proposed rule is listed under the Docket ID as OSM-2007-0018. If you click on OSM-2007-0018, you can view and print a copy of the amendment, the proposed rule, add comments, and view any comments submitted by other persons.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the two listed above will be included in the docket for this rulemaking and considered.

For additional information on the rulemaking process and the public availability of comments, see "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office. See below **FOR FURTHER INFORMATION CONTACT**.

You may review a copy of the amendment during regular business hours at the following locations:

Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128-4629, Telephone: (918) 581-6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711-2967, Telephone: (512) 463-6900.

**FOR FURTHER INFORMATION CONTACT:** Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581-6430. E-mail: [aclayborne@osmre.gov](mailto:aclayborne@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 2, 2007 (Administrative Record No. TX-664), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) 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 on the internet at [www.regulations.gov](http://www.regulations.gov) and at the other locations listed above under **ADDRESSES**.

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) section 12.108(b) regarding annual permit fees by:

- (1) Decreasing the amount of the fee for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year,
- (2) Increasing the amount of the fee for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, and
- (3) Increasing the amount of the fee 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 comments to us by one of the two methods specified 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 cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the two listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

*Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*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 January 2, 2008. If you are disabled and need reasonable 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 docket for this rulemaking.

**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 9, 2007.

**Ervin J. Barchenger,**

*Acting Regional Director, Mid-Continent Region.*

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 946**

[Docket ID: OSM-2007-0013; SATS No. VA-124-FOR]

**Virginia Regulatory Program**

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

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** We are announcing receipt of revisions to a previously proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The revisions concern Virginia’s standards for revegetation success for certain postmining land uses. The amendment is intended to render the State’s regulations no less effective than the Secretary’s regulations in meeting the requirements of the Act. This document gives the times and locations that the Virginia program and proposed amendment to that program are available for your inspection and the comment period during which you may submit written comments on the revisions to the amendment.

**DATES:** Comments on the proposed rule must be received on or before January 2, 2008 to ensure our consideration.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule is listed under the agency name “OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT.” It has been assigned Docket ID: OSM-2007-0013.

If you would like to submit comments through the Federal eRulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and do the following. Find the blue banner with the words “Search Documents” and go to “Optional Step 2.” Select “Office of Surface Mining Reclamation and Enforcement” from the agency drop-down menu, then click the “Submit” button at the bottom of the page. The next screen will have the title “Document Search Results.” The proposed rule is listed under the Docket ID as OSM-2007-0013. If you click on OSM-2007-0013, you can view the proposed rule, add comments, and view any comments submitted by other persons.

- *Mail/Hand Delivery:* Mr. Earl Bandy, Director, Knoxville Field Office,