

*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*

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) *et seq.*).

*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 934**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 12, 2010.

**Allen D. Klein,**

*Regional Director, Western Region.*

- For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

**PART 934—NORTH DAKOTA**

- 1. The authority citation for part 934 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

- 2. Section 934.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

**§ 934.15 Approval of North Dakota regulatory program amendments**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
November 12, 2009 .....	December 27, 2010 .....	NDCC 38–14.1–24(18). NDAC 69–05.2–09–2. 2NDAC 69–05.2–22–07.

[FR Doc. 2010–32414 Filed 12–23–10; 8:45 am]  
BILLING CODE 4310–05–P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 943**

[SATS No. TX–059–FOR; Docket No. OSM–2010–0001]

**Texas Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations regarding annual permit fees. Texas revised its

program at its own initiative to improve operational efficiency. The fee changes encourage mining companies to more quickly reclaim lands and request bond release, thereby fulfilling SMCRA's purpose of assuring the reclamation of mined land as quickly as possible.

**DATES:** *Effective Date:* December 27, 2010.

**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. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. 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 State 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, in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

**II. Submission of the Amendment**

By letter dated January 5, 2010 (Administrative Record No. TX-666), 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.

We announced receipt of the proposed amendment in the April 26, 2010, **Federal Register** (75 FR 21534). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 26, 2010.

**III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

*16 Texas Administrative Code (TAC) Section 12.108 Permit Fees*

Texas proposed to revise its regulations at 16 TAC sections 12.108(b)(1) through (b)(3) regarding annual permit fees by:

(1) Decreasing, from \$150.00 per acre to \$130.00 per acre, the amount of the fee in paragraph (b)(1) for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year,

(2) Increasing, from \$3.75 to \$5.50, the amount of the fee in paragraph (b)(2) for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, and

(3) Increasing, from \$4,200.00 to \$4,250.00, the amount of the fee in paragraph (b)(3) for each permit in effect on December 31st of the year.

The Federal regulations at 30 CFR 777.17, concerning permit fees, provide that applications for surface coal mining permits must be accompanied by a fee determined by the regulatory authority. The Federal regulations also provide that the fees may be less than, but not more than, the actual or anticipated cost of reviewing, administering, and enforcing the permit.

Texas' amendment describes how Texas funds its coal mining regulatory program. Texas operates on a biennial budget which appropriates general revenue funds for permitting and inspecting coal mining facilities within the state. This appropriation is contingent on the Railroad Commission of Texas (Commission) assessing fees sufficient to generate revenue to recover the general revenue appropriation. When calculating anticipated costs to the Commission, for regulating coal mining activity, Texas anticipates OSM providing grant funding up to fifty percent of the regulatory program costs based on section 705(a) of SMCRA. However, OSM does not agree that this is a reasonable expectation in light of the Administration's proposed fiscal year 2011 budget announced on February 2, 2010. The proposed fiscal year 2011 budget reduces overall funding to States, which may result in them receiving less than fifty percent of their anticipated regulatory program

costs, consistent with Section 705 of SMCRA.

Texas adjusts its fees biennially to recover the amounts expended from State appropriations in accordance with a formula and schedule agreed to in 2005 by the coal mining industry and the Commission. This amendment represents the third adjustment to surface mining fees based upon that agreement. Adjustments are expected to continue for a ten year period that began in 2005. This amendment identifies historical and anticipated costs of conducting coal regulatory functions, describes how these costs are allocated to each of the fee types assessed by the Commission, and identifies the per unit rate for each fee that will be assessed during State fiscal years 2010 and 2011. OSM is concerned that the rate for each fee will not generate funds sufficient to cover the cost of the regulatory program.

We find that Texas' changes are consistent with the discretionary authority provided by the Federal Regulations at 30 CFR 777.17. OSM approves Texas' proposed permit fees, including the annual permit fees, recognizing that Texas has a process to adjust its fees to cover the cost of its regulatory program that exceeds fifty percent of the total program costs not covered by the Federal grant.

**IV. Summary and Disposition of Comments**

*Public Comments*

We asked for public comments on the amendment, but did not receive any.

*Federal Agency Comments*

On January 22, 2010, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX-664.02). We did not receive any comments.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on January 22, 2010, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on

the amendment (Administrative Record No. TX-664.02). The EPA did not respond to our request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On January 22, 2010, we requested comments on Texas' amendment (Administrative Record No. TX-664.02), but neither responded to our request.

#### V. OSM's Decision

Based on the above findings, we approve the amendment Texas sent us on January 5, 2010.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 943, which codify decisions concerning the Texas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### VI. Procedural Determinations

*Executive Order 12630—Taking*

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. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

*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: December 2, 2010.  
**Ervin J. Barchenger**,  
*Regional Director, Mid-Continent Region.*  
 ■ For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

**PART 943—TEXAS**

■ 1. The authority citation for part 943 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 943.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

**§ 943.15 Approval of Texas regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
January 5, 2010	December 27, 2010	16 TAC 12.108(b)(1) through (b)(3).

[FR Doc. 2010–32406 Filed 12–23–10; 8:45 am]  
**BILLING CODE 4310–05–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG–2010–1105]

**Drawbridge Operation Regulation; Upper Mississippi River, Rock Island, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Crescent Railroad Drawbridge across the Upper Mississippi River, mile 481.4, at Rock Island, Illinois. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. Maintenance is scheduled in the winter and when there is less impact on navigation; instead of scheduling work in the summer, when river traffic increases. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given.

**DATES:** This deviation is effective from 12:01 a.m., January 17, 2011 to 9 a.m. March 1, 2011.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1105 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–1105 in the “Keyword” box and then clicking “Search”. They are also available for inspection or copying at the Docket Management Facility (M–

30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Eric A. Washburn, Bridge Administrator, Western Rivers, United States Coast Guard; telephone 314–269–2378, e-mail [Eric.Washburn@uscg.mil](mailto:Eric.Washburn@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Burlington Northern Santa Fe Railway requested a temporary deviation for the Crescent Railroad Drawbridge, across the Upper Mississippi River, mile 481.4, at Rock Island, Illinois to open on signal if at least 24 hours advance notice is given for 44 days from 12:01 a.m., January 17, 2011 to 9 a.m., March 1, 2011 to allow the bridge owner time for preventive maintenance. The Crescent Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer’s Lock No. 20 (Mile 343.2 UMR), Lock No. 21 (Mile 324.9 UMR) and Lock No. 22 (Mile 301.2 UMR) from January 3, 2011 to February 28, 2011 will preclude any significant navigation demands for the drawspan opening for most of the deviation period.

The Crescent Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 25.7 feet

above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will open if at least 24-hours advance notice is given. This temporary deviation has been coordinated with waterway users.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 13, 2010.

**Eric A. Washburn**,  
*Bridge Administrator.*

[FR Doc. 2010–32379 Filed 12–23–10; 8:45 am]  
**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG–2010–1100]

**Drawbridge Operation Regulation; Sassafras River, Georgetown, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Sassafras River (Route 213) Bridge, mile 10.0, in Georgetown, MD. The deviation is necessary to facilitate mechanical repairs and gate replacement. This deviation allows the drawbridge to remain in the closed to navigation position.

**DATES:** This deviation is effective from 5 a.m. on January 10, 2011 until 5 p.m. on January 21, 2011.