

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*

In paragraph (b), Texas proposed to increase the annual permit fee from \$120.00 per acre to \$300.00 per acre. Permittees must pay the fee to the Commission for each acre of land within the permit area on which the permittees actually conducted operations for the removal of coal and lignite during the calendar year. Because this increased fee had an effective date of September 1, 2003, Texas also proposed how it is to be calculated for calendar year 2003 only. For the period January 1, 2003, through August 31, 2003, the annual permit fee is \$120.00 per acre and for the period September 1, 2003, through December 31, 2003, the fee is \$300.00 per acre.

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. The annual permit fee increase proposed by Texas is the first such increase since the provision in the Texas Surface Coal Mining and Reclamation Act that authorizes the Commission to set the fee became effective September 1, 1985. We find that Texas' proposed permit fees including the annual permit fee are reasonable and consistent with the discretionary authority provided by the regulations at 30 CFR 777.17.

#### **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 July 25, 2003, 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-655.01). 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 July 25, 2003, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX-655.01). 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 July 25, 2003, we requested comments on Texas' amendment (Administrative Record No. TX-655.01), but neither responded to our request.

#### **V. OSM's Decision**

Based on the above findings, we approve the amendment Texas sent us on July 10, 2003.

We approve the regulations proposed by Texas with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

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—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