

**§ 1.168(i)–(3) Treatment of excess deferred income tax reserve upon disposition of regulated generation assets.**

(a) *Scope.* This section provides rules for the application of section 203(e) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2146) with respect to public utility property that is used in electric generation and ceases, whether by disposition, deregulation, or otherwise, to be public utility property (deregulated generation property).

(b) *Amount of reduction.* If public utility property of a taxpayer becomes deregulated generation property to which this section applies, the reduction in the taxpayer's excess tax reserve permitted under section 203(e) of the Tax Reform Act of 1986 is equal to the amount by which the reserve could be reduced under that provision if all such property had remained public utility property of the taxpayer and the taxpayer had continued use of its normalization method of accounting with respect to such property.

(c) *Cross reference.* See § 1.46–6(k) for rules relating to the treatment of accumulated deferred investment tax credits when utilities dispose of regulated generation assets.

(d) *Effective date—(1) General rule.* This section applies to property that becomes deregulated generation property after March 4, 2003.

(2) *Election for retroactive application.* A taxpayer may elect to apply this section to property that becomes deregulated generation property on or before March 4, 2003. The election is made by attaching the statement “ELECTION UNDER § 1.168(i)–3” to the taxpayer's return for the tax year in which this section is published as a final regulation.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

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**DEPARTMENT OF THE INTERIOR**
**Office of Surface Mining Reclamation and Enforcement**
**30 CFR Part 950**

[WY–031–FOR]

**Wyoming 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 are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the “Wyoming program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes revisions to its coal rules about roads, mine facilities, and excess spoil. Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and clarify ambiguities.

This document gives the times and locations that the Wyoming 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., m.s.t., April 3, 2003. If requested, we will hold a public hearing on the amendment on March 31, 2003. We will accept requests to speak until 4 p.m., m.s.t., on March 19, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the Wyoming 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 the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office.

Guy Padgett, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East “B” Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918, 307/261–6550, Internet: [GPadgett@osmre.gov](mailto:GPadgett@osmre.gov).

Dennis Hemmer, Department of Environmental Quality, Herschler Building, 4th Floor West, Cheyenne, Wyoming 82002, 307/777–7682, Internet: [dhemmer@state.wy.us](mailto:dhemmer@state.wy.us).

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: 307/261–6550. Internet: [GPadgett@osmre.gov](mailto:GPadgett@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background of the Wyoming 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 [the] Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to [the] 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 Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

**II. Description of the Proposed Amendment**

By letter dated November 28, 2002, Wyoming sent us a proposed amendment to its program, (administrative record number WY–36–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a 30 CFR part 732 letter dated February 21, 1990, and an October 3, 1990, follow-up letter (administrative record numbers WY–36–6 and WY–36–7) that we sent to Wyoming, and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under

**ADDRESSES.**

Specifically, Wyoming proposes to revise the following Coal Rules:

- (1) Chapter 1, Section 2, and Chapter 2, Section 2(a) and (b), miscellaneous revisions regarding use of the terms, “primary” and “ancillary” roads and “mine facilities;”
- (2) Chapter 1, Section 2(bu), definition of public road;
- (3) Chapter 1, Section 2(bz), definition of road;
- (4) Chapter 2, Section 2(b)(i)(D)(V), maps and plans;
- (5) Chapter 2, Section 2(a) and (b), permit applications;
- (6) Chapter 2, Section 2(b)(xix), road systems;
- (7) Chapter 4, Section 2(j), road classification system;
- (8) Chapter 4, Section 2(j)(v), performance standards;
- (9) Chapter 4, Section 2(j)(v), reclamation;
- (10) Chapter 4, Section 2(j)(i)(A), and 2(j)(ii), roads and other transportation facilities;
- (11) Chapter 4, Section 1(a)(v), access roads and haulage roads;
- (12) Chapter 4, Section 2(j)(vii), primary roads;
- (13) Chapter 4, Section 2(j), exemptions concerning

roads; (14) Chapter 4, Section 2(m), disposal of mine facilities; (15) Chapter 4, Section 2(c), topsoil, subsoil, overburden, and refuse; (16) Chapter 5, Section 7(a)(ii), remining; and (17) Chapter 18, Section 3(c)(xvii), 3(d)(vi)(A), and 3(d)(ix), consistent use of the Office of Surface Mining's road classification system.

### 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 Wyoming program.

#### Written Comments

Send your written or electronic comments to OSM at the address given above. Your 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 Casper Field Office may not be logged in.

#### Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. WY-031-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 Casper Field Office at 307/261-6550.

#### 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., m.s.t. on March 19, 2003. 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 the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a 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 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 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 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 950**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 6, 2003.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 229**

[Docket No. 030221039-3039-01; I.D. 081602B]

**RIN 0648-AQ04**

#### **Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments

**SUMMARY:** NMFS proposes to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to identify gear modifications that sufficiently reduce the risk of entanglement to western North Atlantic right whales (right whales) under the Dynamic Area Management (DAM) program and, as such, would allow NMFS to utilize the option of allowing gear with certain modifications within a DAM zone. Specifically, NMFS proposes to identify Seasonal Area Management (SAM) anchored gillnet and lobster trap/pot gear as gear that could be allowed within a DAM zone. NMFS also includes in this proposed rule a

provision to clarify one of the SAM gear modification requirements (600 lb (272.4 kg) weak link) for lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area.

**DATES:** Comments on the proposed rule must be received by 5 p.m. EST on April 3, 2003.

**ADDRESSES:** Send comments on this proposed rule to Mary Colligan, Assistant Regional Administrator for Protected Resources, Protected Resources Division, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930. Comments will not be accepted if sent via e-mail or Internet. Copies of the draft Environmental Assessment/Regulatory Impact Review for this action can be obtained from the ALWTRP website listed under the Electronic Access portion of this document. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katherine Wang, NMFS, Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702-2432. For additional **ADDRESSES** and web sites for document availability see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS, Northeast Region, 978-281-9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access**

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.nmfs.gov/whaletrp/>. Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at <http://www.wh.who.edu/psb/sar2001.pdf>. In addition, copies of the documents entitled "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options" and "Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation" are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or can be downloaded from the Internet at <http://www.nero.nmfs.gov/whaletrp/>.