

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.
- 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 a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 27, 2001.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

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

2. Section 913.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|------------------------------------|---------------------------|---|
| June 28, 2001 | November 21, 2001 | 225 ILCS 720/1.03(a)(9-a), 1.04(a) and (c), 105, 2.08(e), 6.07(f), 6.08(i), 7.03(b), 7.04(a), 9.01. |

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT-022-FOR]

Montana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Montana regulatory program (hereinafter, the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or "the Act"). Montana proposed a statutory revision concerning transfer of

a revoked permit. HB-495 was passed by the Montana legislature and signed into law by the Governor to enable the transfer of a revoked permit to a new party so as to continue the original proposed coal mining and reclamation operation. The State intends to revise its program to improve operational efficiency.

EFFECTIVE DATE: November 21, 2001.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office; Telephone: 307-261-6550; e-mail address: *gpadgett@osmre.gov*.

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of SMCRA 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 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 Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana regulatory program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated April 27, 2001, Montana sent us a proposed amendment

to its program (Administrative Record No. MT-19-01) under SMCRA (30 U.S. 1201 *et seq.*). Montana submitted the amendment after the State Legislature passed HB-495. Governor Judy Martz signed the bill into law on May 1, 2001. The amendment changes the Montana Strip and Underground Mine Reclamation Act (MSUMRA), which governs the State's regulatory program. Specifically, the proposed amendment provides the following:

Section 1. Operating permit revocation—permit transfer; that a revoked operating permit will not terminate until five years after revocation, or until substantial revegetation occurs. The amendment allows a person to apply for the transfer of a revoked permit that has not terminated by submitting to the Department of Environmental Quality (the department) an application that contains information required for a permit applicant by section 82-4-222 of Montana's statute. The amendment requires the department to stop reclamation activities on the permit area upon receipt of a transfer application. It also provides that a person who applies for a revoked permit need not submit any additional information unless the department can show that significant changes in the environmental baseline data occurred. Under the proposed amendment, the department must process transfer applications under time frames already in Montana's statutes. The amendment provides that, after a public comment period, the department must transfer the permit when the new operator provides proof of site ownership or control and adequate bonding. It further requires all pre-existing permit deficiencies and necessary modifications to be corrected to the department's satisfaction before additional surface is disturbed, and that pre-established environmental monitoring requirements continue. The proposed amendment specifies conditions under which the department may not transfer a permit, including the need for significant changes in the operating or reclamation plans and if the applicant or owners or controllers of the applicant have outstanding violations. This amendment provides that the department is not required to reimburse the former permittee or surety for funds expended for reclamation, monitoring or site maintenance. This statutory change does not apply to the revocation or transfer of an operating permit that authorizes mining on Federal lands.

Section 2. Codification instruction; states that Section 1 is intended to be codified as an integral part of Title 82,

chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to Section 1.

Section 3. Effective date; states this act is effective on passage and approval.

Section 4. Applicability: States Section 1 applies to mine operating permits that are in effect as of the effective date of this act and applies retroactively, within the meaning of 1-2-109, to permits that were revoked no more than 5 years before the effective date of this act.

Section 5. Termination B contingent termination; states except as provided in subsection (2), this act terminates October 1, 2005.

We announced receipt of the proposed amendment in the May 24, 2001, **Federal Register** (66 FR 28680; Administrative Record No. MT-019-04). In the same document, we opened the public comment period and provided an opportunity for a public hearing on the amendment's adequacy. We did not hold a public hearing because nobody requested one. The public comment period ended on June 25, 2001. We received written comments from one private citizen, one industry group, one environmental group, the Governor of Montana, and two Federal agencies.

III. Director's Finding

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.

1. Standard Applied in Reviewing This Amendment

The proposed change to the Montana statute has no counterpart in either SMCRA or the Federal regulations. However, that does not mean that it must automatically be disapproved. Section 505(b) of SMCRA provides that "Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act."

The criteria for deciding whether this proposed amendment should be approved or disapproved are whether or not the proposed amendment is in accordance with the provisions of the SMCRA and consistent with the requirements of the Federal regulations. As those phrases are defined in 30 CFR 730.5, the proposed amendment should

be no less stringent than SMCRA and be no less effective than the Federal regulations in meeting the requirements of SMCRA in order to be approved. For the reasons articulated below, we conclude that the proposed amendment is no less stringent than SMCRA and no less effective than the Federal regulations and, therefore, may be approved.

2. Assumption of a Revoked Permit by Another Party in Order To Reinitiate Mining

The basic objective of the proposed amendment is to allow another party to assume a revoked permit and begin mining under the terms of that permit. While SMCRA and the Federal regulations clearly provide for the revocation of permits and separately provide for the transfer, assignment, or sale of permit rights, there is no express Federal counterpart to the changes Montana proposes to make to MSUMRA in this amendment which would allow another party to assume a revoked permit and begin mining under the terms of that permit. The question, then, is whether or not such a provision is inconsistent with SMCRA.

We have previously addressed this basic question in relation to a statutory change proposed by another State. West Virginia proposed a somewhat comparable amendment to its approved statutory requirements on April 28, 1997. That amendment allows a revoked permit to be reinstated within one year following the notice of permit revocation, subject to the discretion of the West Virginia Division of Environmental Protection's (WVDEP) director and based on WVDEP's receipt of a petition for reinstatement. The amendment further provided that a reinstated permit may be assigned to any person who meets the permit eligibility requirements of West Virginia's regulatory program.

We published our approval of West Virginia's proposed statutory change in the February 9, 1999, **Federal Register** (64 FR 6201). In our decision, we noted that the Federal enforcement requirements of section 521 of SMCRA do not specifically prohibit reinstating a revoked permit. Therefore, we approved the proposed statutory revision in so far as it did not contain any provisions that are less stringent than the requirements of SMCRA.

That same rationale applies here. While the proposed Montana amendment provides that revoked permits do not actually terminate for a specified period (five years) after revocation, rather than allowing for reinstatement as with the approved

West Virginia program, the effect is the same. Either program would allow another party to assume a revoked permit and begin mining within the terms of that permit. To disapprove one approach after approving the other would be inconsistent. Further, providing a mechanism for other operators to assume the reclamation liability and commence mining at forfeited sites that have not yet been reclaimed is consistent with the objective of section 515(b)(1) of SMCRA which is to maximize recovery of the coal resource in order to minimize re-affecting reclaimed land through future mining operations. It is also consistent with our re-mining initiatives. Therefore, we find that the basic concept embodied in the proposed revision to the Montana program may be approved since it is not specifically prohibited by SMCRA and is not less stringent than SMCRA.

Permits issued under the approved Montana program are valid for five years and are subject to renewal. However, under this provision, a revoked permit does not terminate until five years after revocation. Based upon this provision, we understand that should a permit be transferred during that five-year period, it would still expire at the end of those five years unless renewed by the new owners of the permit. For example, if a transfer takes effect three years after revocation, the transferred permit will terminate two years after the transfer unless renewed. Our determination that the provision is no less stringent than SMCRA is based upon this understanding.

3. Process for Another Party To Assume a Revoked Permit

While the proposed statutory change to the West Virginia program was approved on February 9, 1999, that same **Federal Register** notice made clear that the State was barred from implementing the change until its program was further amended to specify procedures for implementing the approved change. Thus, while the statutory change providing the concept was found no less stringent than SMCRA, it was not yet clear that the processes to be used to implement the provision would be no less effective than the Federal regulations. Therefore, we notified West Virginia that, before implementing the provision, it must establish provisions governing such transfers that provide adequate safeguards to ensure that the reinstated permit will satisfy all the requirements of the West Virginia Surface Mining Control and Reclamation Act (WVSMCRA). In addition to eligibility

requirements, which were already covered in the approved amendment (and which are also adequately covered in the proposed Montana amendment), we notified West Virginia that it must establish procedures that (1) allow for public participation, (2) require that the revoked permit meet appropriate permitting requirements of the WVSMCRA, and (3) require that the mining and reclamation plan be modified to address any outstanding violations. We also stated that (4) in no event can a reinstated permit be approved in advance of the close of the public comment period, and (5) the party seeking reinstatement must post a performance bond that will be in effect before, during, and after the reinstatement of the revoked permit.

On March 14, 2000, West Virginia sent to us amendments primarily incorporating reinstatement provisions into its transfer regulations. In the August 18, 2000, **Federal Register** (65 FR 50409) largely approving the procedures proposed by West Virginia, we seemed to add a sixth criterion by stating that procedures must not result in the intentional delay of bond forfeiture reclamation. These six criteria, articulated to evaluate whether or not the procedures adopted by West Virginia are no less effective than the Federal regulations, provide a reasonable standard for evaluating whether or not this proposed amendment to Montana's approved program contains adequate procedural safeguards for implementing the concept of allowing another party to assume mining at the site of a revoked permit. Therefore, to the extent the proposed amendment meets these criteria, it can be found no less effective than the Federal regulations.

4. Comparison of Montana's Proposed Amendment With the Specific Criteria Established by OSM for the West Virginia Proposal

Based upon application of the six criteria established to evaluate the West Virginia proposal to the proposed Montana amendment, we find that Montana's proposed amendment is no less effective than the Federal regulations pertaining to the transfer, assignment, or sale of permit rights at 30 CFR 774.17.

Of the six criteria established to evaluate the West Virginia proposal, the first and fourth dealt with the issue of public participation. The first criterion required public notice, and the fourth criterion required that the transfer not occur until the close of the public comment period. The proposed Montana amendment meets these

requirements. Proposed Section 1.(6) provides for transfer only after public notice and opportunity for comment. This requirement is not inconsistent with 30 CFR 774.17(c) and is no less effective than the Federal regulations so long as it is implemented in a manner consistent with that Federal provision.

The second criterion established to evaluate the West Virginia proposal was that the revoked permit meet appropriate permitting requirements. The proposed Montana amendment meets this requirement. Proposed Section 1.(2) requires that the application for transfer of a revoked permit contain the information required for a permit applicant in sections 82-4-222(1)(b) through (i) of the Montana program. Those sections generally require information pertaining to ownership and control of both the subject site and mining operation and other legal, financial, and compliance matters.

An area of potential concern regarding the second criterion is that proposed Section 1.(3) would preclude Montana from requiring additional information from the applicant unless Montana can show that significant changes in the environmental baseline data have occurred. However, this limitation is mitigated by several provisions of the proposed amendment which require the submission of information to correct both paperwork deficiencies and operational violations of the previously approved mining and reclamation plan. First, proposed Section 1.(2) requires the applicant to submit all of the compliance information for outstanding violations required by 82-4-222(1)(g) of the Montana program, and proposed Section 1.(7)(c) prohibits transfer of a revoked permit unless those violations are corrected. Second, proposed Section 1.(6)(b) requires, as a condition of permit transfer, that, prior to creating any additional disturbance at the site, all preexisting permit deficiencies must be corrected to the satisfaction of Montana and, also, that any preestablished environmental monitoring requirements must continue. Third, proposed Sections 1.(7)(a) and (b) prohibit permit transfer where Montana can show that significant changes to the operating or reclamation plan are necessary or where program requirements for backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be met. Finally, proposed Section 2 applies the provisions of the entire Montana program, namely, Title 82, Chapter 4, Part 2, to proposed Section 1. We

understand this to mean that all of the provisions of the Montana program apply to the process for transfer of a revoked permit, except those which are expressly modified by Section 1. We find that, taken together, these provisions of the proposed Montana amendment are fully sufficient to assure that the informational requirements for transfer of a revoked permit are no less effective than 30 CFR 773.17(b) and (c).

The third criterion established to evaluate the West Virginia proposal was that the mining and reclamation plan be modified to address any outstanding violations. The proposed Montana amendment meets this requirement. Proposed Section 1.(7)(c) prohibits transfer of a revoked permit where Montana can show that it would otherwise be precluded from doing so because of an outstanding violation or pattern of violations pursuant to 82-4-227(11) or (12) of the Montana program. Also, proposed Section 1.(6)(b) requires, as a condition of permit transfer, that, prior to creating any additional disturbance at the site, all preexisting permit deficiencies, including modifications necessary because of reclamation that has been conducted at the site, be corrected to Montana's satisfaction. Taken together, these sections of the proposed Montana amendment are no less effective than 30 CFR 773.17(d)(1).

The fifth criterion established to evaluate the West Virginia proposal was that a bond be posted. The proposed amendment, at Section 1.(6)(a), stipulates that adequate bonding, as required by the program, must be provided before the transfer can occur. This is consistent with the requirement and no less effective than the Federal regulations.

The sixth and final criterion, added in the August 18, 2000, **Federal Register** notice, was that the procedures must not result in an intentional delay of bond forfeiture reclamation. One area of potential concern with the proposed amendment is that, unlike the West Virginia provision that limits reinstatement of a revoked permit to within 1 year of revocation, this proposal provides that a revoked permit does not terminate until five years after revocation or substantial completion of seeding and planting on disturbed areas, whichever occurs earlier. It has been OSM's experience, working with many States over several years, that it is not uncommon for 1 to 5 years, or even more, to lapse between the time of permit revocation and the completion of reclamation with forfeited funds. Therefore, the proposed time limit of 5 years is not unreasonable, particularly

since the time will be less if reclamation with forfeited funds is substantially completed in less than five years. Our finding that this provision will not result in intentional delays in bond forfeiture reclamation is based upon our understanding that Montana will continue to proceed to reclaim forfeited sites in a timely manner within the 5-year time limit in this provision unless an application for transfer is received. Should we find in future reviews that Montana is intentionally delaying reclamation to allow the full 5 years to lapse, we will reconsider this finding and may require an amendment.

A potential concern with the proposed amendment related to reclamation delays is the provision that, upon receipt of an eligible application, the department shall cease reclamation activities on the permit area. On its face, it seems very reasonable and prudent to cease reclamation activities when it appears that another party will likely take over the permit and resume mining. In fact, to not cease reclamation activities would be to potentially waste forfeiture funds while increasing the disturbance necessary to resume mining. In addition, the proposal makes clear that an application must contain all the ownership and violation information necessary to determine eligibility for a permit and that reclamation activities should cease only when an application is received from an eligible applicant. Therefore, our finding that this provision will not cause intentional delays in bond forfeiture reclamation is based upon our understanding that, consistent with these provisions, Montana will not cease reclamation activities with forfeited funds until it has checked the application to make sure that the information required by 82-4-222(1)(b) through (1)(i) is contained in the application and Montana has determined that the applicant is eligible for a permit. Only then, as we understand this proposal, would Montana cease reclamation with forfeited funds. If, in future reviews, we should determine that Montana is applying this provision inconsistent with this finding, a further amendment may be required.

Although not expressly addressed in the proposed Montana amendment nor in the Federal permit transfer regulations in 30 CFR 774.17, having liability insurance is also a requirement for all permittees under the Federal program. However, Section 2 of the amendment applies the provisions of Title 82, chapter 4, part 2, to Section 1. As stated above, we understand this to mean that the provisions of Title

82, chapter 4, part 2 apply to the process for application for transfer of a revoked permit, except as expressly modified by Section 1. The application of section 82-4-222(5), which requires an applicant for a transfer to submit a certificate of public liability insurance, has not been modified by Section 1. Therefore, we understand the amendment to include the requirement for a certificate of public liability insurance. Our finding that the proposal is no less effective than the Federal regulations and not less stringent than SMCRA is based upon that understanding.

IV. Summary and Disposition of Comments

Public Comments

We received six letters concerning the proposed amendment, primarily in response to our request for comments. Following are summaries of all written comments on the proposed amendment that we received and our responses to those comments.

B.M.P. Investments, Inc. (BMP) responded in a June 13, 2001, letter, by expressing its support for the proposed amendment (Administrative Record No. MT-19-06). BMP asserted that neither SMCRA nor the 30 CFR regulations contain any provisions precluding our approval of Montana's proposed amendment. It further asserted that there is no language in SMCRA or the Federal regulations that prohibits a State from reissuing a revoked mine permit under the conditions contained in Montana's new statutory amendment (HB-495).

We agree with these comments as we discussed above in Part III, Director's Findings, of this final rule.

In a letter dated June 28, 2001, Montana Governor Judy Martz expressed to the Secretary of the Interior her support for the amendment on the basis that it expedites the resumption of mining at a site that is already reviewed and permitted (Administrative Record No. MT-19-09). Governor Martz requested that we allow Montana to implement the statute. She noted that the amendment safeguards against environmental damage by requiring preexisting permit deficiencies to be corrected, additional information if there have been significant changes in baseline data, and preestablished environmental monitoring requirements to continue. The Governor also noted that a revoked permit may not be transferred if existing requirements of the statutes cannot be met, significant changes in the operating or reclamation plan are needed, or the applicant has

uncorrected violations. She further noted the amendment's provisions for public notice and comment, site ownership and control, and adequate bonding.

The Northern Plains Resource Council (NPRC) expressed several concerns for the proposed amendment in a letter dated June 21, 2001 (Administrative Record No. MT-19-08). NPRC asserted that Montana's amendment goes beyond the scope and authority of SMCRA and that there is no authority to resurrect a permit that has ceased to be. NPRC stated that, by definition, a revoked permit does not exist and SMCRA does not provide for rehabilitation of revoked permits through permit transfer. We disagree with this comment. As we stated under Part III, Director's Findings, we previously approved an amendment proposed by West Virginia that raised the issue of reinstating revoked permits. In that approval, we held that SMCRA does not specifically prohibit the reinstatement of a revoked permit and we approved the transfer of such permits to a third party. In doing so, we specified the criteria that would be necessary for full approval and operation of this provision. We also noted previously in this final rule that section 505(b) of SMCRA provides that "Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act."

NPRC noted that Montana's proposed amendment requires the State to stop reclamation activities upon receipt of an application for transfer of a revoked permit. NPRC maintained that stopping such activities would cause even further delay of reclamation with forfeited funds. We expressly address this issue above in the findings section in our discussion of this provision. Again, while we recognize it as an area of potential concern, we reiterate that it is not only reasonable but also prudent to stop reclamation activities when an application has been received that indicates a strong likelihood that mining will resume in the near future. This would be true even without this provision. It would still be reasonable for any Regulatory Authority to suspend reclamation using forfeited funds if it received an entirely new permit application seeking to mine an area where a permit had been previously revoked and reclamation with forfeited funds was underway. Knowing that it

has received a complete application for transfer of the revoked permit and finding that the applicant is not precluded from holding a permit pursuant to the Montana program, we believe that it would be prudent for Montana to then halt expenditure of forfeited funds on reclamation as required by the proposed amendment. However, the amendment does not change existing obligations on Montana to proceed with reclamation in the event of bond forfeiture until a transfer application is received.

NPRC stated that the party filing the application assumes no liability for the site until approval while extending the State's liability by further delaying reclamation. We note that liability for the site remains with the original permittee until the site is reclaimed by the State with forfeited bond funds or is taken over by another party.

NPRC asserted that the proposed process does not evaluate the financial ability of the applicant against the financial requirements of taking over the permit. While that is true, such an evaluation has never been part of the permitting process under SMCRA nor does SMCRA expressly authorize or require such a review. Therefore, we would have no basis to require it in relation to this amendment. However, Montana's amendment only allows the State to transfer a permit to a new operator if that new operator provides proof of adequate bonding as required by MSUMRA. The bond is the financial guarantee that reclamation work will be performed.

The NPRC expressed concerns that, because the information required for a transfer of permit under the proposed amendment is minimal and administrative, changes in field conditions or in the proposed operation/reclamation plan would not be adequately addressed prior to permit transfer. It is true that, in most circumstances, the information required in the application is limited to administrative information. However, that is also true of the Federal rules at 30 CFR 774.17(b) for permit transfer which formed the basis for the approach taken by West Virginia in response to our requirement to establish procedures for implementing the reinstatement of revoked permits. Further, while Montana is precluded from preparing a full review under 75-1-201, it is not precluded from using information it receives during the public comment period or information it already has from its permit files, inspection and enforcement files, or forfeiture reclamation work to evaluate the application. In fact, it would have to do

so to determine whether or not it can show that significant changes to the operating plan or reclamation plan are necessary or that certain reclamation requirements cannot be met. Either finding would preclude issuance of the transfer. Governor Martz recognized these limitations on permit transfers under the proposed amendment by stating in her comment letter that "if the existing requirements of the statutes cannot be met, significant changes in the operating plan or reclamation plan are necessary, or the applicant is in violation of Public Law 95-87, the department may not transfer the permit * * *" (Administrative Record No. MT-19-09; emphasis added). Therefore, it is clear that Montana will undertake sufficient analysis to determine if these conditions exist. Our finding that the proposed amendment is no less effective than the Federal rules and meets the criteria outlined for West Virginia is based upon Montana undertaking that level of analysis. Also, Montana can require additional information as part of the application if significant changes occurred in the environmental baseline data during the period of operation or since the original permit was revoked. Further, as previously discussed, as a condition of the transfer, all preexisting problems must be addressed to the satisfaction of Montana before additional disturbance is created.

The NPRC stated that the permit that is the immediate subject of this proposed amendment is the Bull Mountain Mine No. 1 permit. NPRC goes on to allege numerous concerns with the Bull Mountain mine. While we make no judgment with respect to these allegations, how that mine was operated with regard to the permit is not a factor in our consideration of the proposed amendment. Under this amendment, Montana can only approve a transfer if the permit transfer application is complete and (1) it cannot show that either the operation plan or the reclamation plan needs to be changed, (2) it cannot show that the requirements of MSUMRA and the administrative rules for operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, and reclamation of the affected area cannot be met, (3) proof of ownership or control has been provided, (4) the applicant is eligible to receive a permit, and (5) adequate bond has been posted. Also, liability insurance is required. Further, that transfer will be conditioned to require that all preexisting permit deficiencies be corrected to the satisfaction of Montana before additional disturbance is

allowed. We make no judgment of whether or not the Bull Mountain No. 1 permit could qualify for a transfer under the proposed amendment. However, we believe the above provisions are adequate to assure that mining could only resume at that site if concerns such as NRCR allegations are addressed.

We also received comments in a letter dated July 16, 2001, from a citizen involved in the purchase of property nearby the Bull Mountain mine (Administrative Record No. MT-19-10). The citizen expressed concern that he considered the permit revocation to be final but that the change in Montana's law that is the subject of this amendment has made it an issue again. The commenter stated that the mine's uncertain status makes it difficult for anyone to decide whether or not to live and invest in the area. He argued that there should be another opportunity for local public input into the permitting decision, noting that conditions have changed since the permit was revoked and local residents appear to be ill-informed about the mine's status. As we noted previously in this final rule, the amendment requires the department to provide for public notice and the opportunity for comment while processing an application for transferring a revoked permit. We also noted previously that this proposed amendment allows the department to request additional information from the applicant if it can show that significant changes in environmental baseline data have occurred. We noted further that this amendment precludes the department from transferring a revoked permit if it can show that significant changes in the operation/reclamation plan are needed or that other requirements of Montana's statute and rules cannot be met. Governor Martz reiterated these requirements in her June 28, 2001, letter to us (Administrative Record No. MT-19-09). Finally, we note that anyone investing in areas of known coal reserves or an inactive mine owned by others cannot be guaranteed that future mining will not occur. Even without a provision such as proposed in this amendment, inactive or reclaimed mines can be reactivated under completely new permits if they meet requirements that already exist in applicable Federal and State laws and regulations.

Federal Agency Comments

Under 30 CFR 731.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment in letters dated May 15, 2001, from various Federal agencies with an actual or

potential interest in the Montana program (Administrative Record No. MT-19-03).

In a letter dated June 18, 2001, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) stated that Montana's proposed amendment will not affect MSHA's enforcement of the Federal Mine Safety and Health Act of 1977 (Administrative Record No. MT-19-05).

The U.S. Department of the Interior, Bureau of Indian Affairs (BIA), responded to our request for comments in a letter dated June 22, 2001 (Administrative Record No. MT-19-07). The BIA stated that it is comfortable with the procedures and requirements Montana advocates in its amendment. It added that only one mine in Montana currently produces Indian owned coal, and that it does not anticipate that mine's permit being revoked or transferred.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written agreement from EPA for those provisions of the program amendment that related 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 Montana proposed to make in this amendment pertain to air or water quality standards. As a result, we did not ask EPA to agree on the amendment.

However, we did request comments from EPA under 30 CFR 732.17(h)(11)(i) in a letter dated May 15, 2001 (Administrative Record No. MT-19-03). EPA did not respond to our request.

State Historic 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 May 15, 2001, we requested comments from them on Montana's amendment (Administrative Record No. MT-19-03). Neither the SHPO nor the ACHP responded to our request.

V. Director's Decision

Based on the above finding, we approve the amendment Montana sent to us on April 27, 2001.

We approve, as discussed in Part III, finding number 1: Section 1 of Title 82, chapter 4, part 2 of the Montana Strip and Underground Mine Reclamation Act, providing for transfer of revoked

operating permits, including provisions for applying for a transfer, processing transfer applications, approving and not approving transfer requests, requirements for reimbursement of expended funds, and restricting transfer requests to non-Federal lands.

To implement this decision, we are amending the Federal regulations at 30 CFR part 926, which codify decisions concerning the Montana 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 regulation 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 significant takings implications and therefore a takings implication assessment is not required. The basic objective of the amendment is to allow a new party to assume a revoked permit and begin mining under the terms of that permit.

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 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 since each such 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 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 because it 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 basic objective of the amendment is to allow a new party to assume a revoked permit and begin mining under the terms of that permit. Because the application of the rule is limited and because the party assuming the revoked permit stands to gain an economic benefit, we have concluded that the rule will not have a significant economic impact on a substantial number of small entities.

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 on the fact that the application of the rule is limited and the party assuming the revoked permit stands to gain an economic benefit.

Unfunded Mandates

OSM has determined under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on any local, State, or Tribal governments or private entities.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, surface mining, underground mining.

Dated: November 6, 2001.

Brent T. Wahlquist,
Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 926 is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

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

2. Section 926.15 is amended in the table by adding a new entry in chronological order by November 21, 2001 to read as follows:

926.15 Approval of Montana regulatory program amendments.

| Original amendment submission date | Date of final publication | Citation/Description |
|------------------------------------|---------------------------|---|
| April 27, 2001 | November 21, 2001 | MCA 82–4 Part 2 Operating permit revocation—permit transfer |

[FR Doc. 01–29106 Filed 11–20–01; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–1998–3423]

RIN 2115–AF55

Implementation of the National Invasive Species Act of 1996 (NISA)

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: To comply with the National Invasive Species Act of 1996 (NISA), the Coast Guard has established both regulations and voluntary guidelines to control the invasion of aquatic nuisance species (ANS). Ballast water from ships is one of the largest pathways for the intercontinental introduction and spread of ANS. This rule finalizes regulations for the Great Lakes ecosystem and voluntary ballast water management guidelines for all other waters of the United States, including mandatory reporting for nearly all

vessels entering waters of the United States.

DATES: This final rule is effective December 21, 2001.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1998–3423 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this