

cannot absolve the operator of liability in the event of an accident, the document will provide proof that the passenger has been advised of the risks inherent in the type of operation to be conducted. In addition, the signature will acknowledge the fact that the FAA has NOT made a determination that the aircraft is considered safe to carry passengers for compensation or hire.

#### 14. Crew Qualification and Training

a. Pilots must possess a minimum of a commercial pilot certificate with instrument rating appropriate to the category and class of aircraft to be flown. They must also hold a type rating is required by the type of aircraft flown along with a current second class medical certificate.

b. Initial and recurrent training must be performed to current ATP Practical Test Standards for aircraft requiring a special authorization or type rating to operate.

c. An initial ground and flight-training program must be developed by the organization and completed by all pilots.

d. Recurrent ground training must be developed and completed by all pilots or an annual cycle.

e. An annual proficiency check must be conducted and if necessary, recurrent flight training will be required. A minimum activity level and satisfactory flight proficiency check may allow the requirement for recurrent flight training to be waived.

f. The petitioner will state the minimum flight experience required for each pilot position.

g. Pilots will maintain takeoff and landing currency in each make and model.

h. A system for documenting and recording all crew qualifications, required training, checking and currency must be developed and maintained.

i. All training and checking programs must be approved by the FAA.

#### 15. Maintenance/Inspection of Aircraft

a. The maintenance history of each individual aircraft must be provided.

b. The petitioner must provide an FAA approved maintenance/inspection program that may be a program based on military and/or original manufacturer's manuals and must be in accordance with the type certification data sheet and the aircraft's operating limitations.

c. All maintenance and inspections will be documented and recorded.

d. Applicants may be required to submit an operational history of the make/model/type in order for the FAA to verify that the submitted

maintenance/inspection program is adequate.

16. All maintenance or operational incidents will be reported to the Flight Standards District Office in whose district the organization's principal base of operations is located.

#### 17. Passenger Safety and Training

a. An FAA approved passenger briefing must be conducted appropriate to the scope of operations. Passengers must be fully informed of the risks associated with the proposed rides, and that occupying a seat in these aircraft may subject the rider to a high level of risk. Some operations may require passenger-briefing cards.

b. The passenger briefing must include normal and emergency egress procedures, passenger seating, and overview of safety restraint systems.

c. Passenger training equivalent to that provided for Department of Defense familiarization flights must be approved by the FAA and conducted for all flights involving any of the following:

i. Ejection seats, if the aircraft is so equipped;

ii. High altitude operations, if flight will be conducted above 10,000 feet MSL;

iii. Oxygen system, for flights above 10,000 feet MSL or if use of the system is required by type of operation.

Petitioners will be required to demonstrate their ability to safely perform the operations requested and to meet all operating and maintenance requirements. The extent of this demonstration will be dependent on the scope of the operation requested. Petitioners who have conducted this type of operation must provide a summary of their operating history.

Additionally, all petitioners will be required to submit documentation sufficient to allow the FAA to determine the number of passenger seats to be utilized during compensated operations and the FAA approval status of those seats. Petitioners will also be required to provide the U.S. registration number and make/model/serial number of the aircraft to be used.

Petitioners who have submitted requests should review this draft policy statement and consider supplementing their petitions if they have not previously provided the necessary information. The FAA will consider any information submitted and determine whether more information is necessary to make a decision on whether it is appropriate to grant an exemption for a particular aircraft. The FAA anticipates that some aircraft models that have been granted exemptions may no longer qualify for future exemptions.

Petitioners should be precise regarding the requirements from which they seek relief. In addition petitioners should provide copies of the airworthiness certificate, including a copy of the operating limitations issued for each aircraft that would be subject to the conditions and limitations of the proposed exemption. Those submitting petitions for exemption or additional information should submit the required information to the following: (1) for paper submissions, send the original signed copy of your submission to the U.S. Department of Transportation, Docket Management System, 400 7th Street, SW., Room PL 401, Washington, DC 20591-0001; or (2) for electronic submissions, submit your information to the FAA through the Internet using the Docket Management System Web site at this Internet address: <http://dms.dot.gov/>. If you already have received a docket number, you must reference that docket number in your request.

The FAA is soliciting comments from the public regarding this draft policy statement. We will not consider any new requests for exemption from the date this proposed policy is published to the time at which all comments are received and adjudicated.

Issued in Washington, DC on March 21, 2006.

**James J. Ballough,**

*Director, Flight Standards Service.*

[FR Doc. 06-2915 Filed 3-24-06; 8:45 am]

**BILLING CODE 4910-13-M**

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 926

[MT-026-FOR]

#### Montana 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 Montana regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).

This document gives the times and locations that the Montana regulatory 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 26, 2006. If requested, we will hold a public hearing on the amendment on April 21, 2006. We will accept requests to speak until 4 p.m., m.s.t., on April 11, 2006.

**ADDRESSES:** You may submit comments, identified by "MT-026-FOR," by any of the following methods:

- E-mail: [rpair@osmre.gov](mailto:rpair@osmre.gov). Include "MT-026-FOR" in the subject line of the message.

- Mail/Hand Delivery/Courier: Richard Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B St., Rm. 1018, Casper, WY 82601-1018. (307) 261-6550. [rbuckley@osmre.gov](mailto:rbuckley@osmre.gov).

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and indicate docket number "MT-026-FOR." For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** Access to the docket, to review copies of the Montana regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) (hereinafter, the "Montana program"), this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained 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 Office of Surface Mining Reclamation and Enforcement (OSM's) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Richard Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B St., Rm. 1018, Casper, WY 82601-1018. (307) 261-6550. [rbuckley@osmre.gov](mailto:rbuckley@osmre.gov).

Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (406) 444-2544. [neharrington@mt.gov](mailto:neharrington@mt.gov).

**FOR FURTHER INFORMATION CONTACT:** Richard Buckley, Telephone: (307) 261-6550. E-mail: [rbuckley@osmre.gov](mailto:rbuckley@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Montana 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 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 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. Description of the Proposed Amendment**

By letter dated January 18, 2006, Montana sent us a proposed amendment to its program (MT-026-FOR, Administrative Record No. MT-023-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to an April 2, 2001, letter that we sent to Montana in accordance with 30 CFR 732.17(c) [pertaining to valid existing rights], and to include the 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**.

The provisions of the Montana Code Annotated (MCA) that Montana proposes to revise or add are:

MCA 82-4-206, Procedure for contested case hearings; MCA 82-4-223, Permit fee and surety bond; MCA 82-4-225, Application for increase or reduction in permit area; MCA 82-4-226, Prospecting permit; MCA 82-4-227, Refusal of permit; MCA 82-4-231, Submission of and action on reclamation plan; MCA 82-4-232, Area mining required—bond—alternative plan; MCA 82-4-233, Planting of

vegetation following grading of disturbed area; MCA 82-4-235, Determination of successful reclamation—final bond release; MCA 82-4-251, Noncompliance—suspension of permits; MCA 82-4-254, Violation—penalty—waiver; MCA 82-4-1001, Penalty factors; and MCA 82-4-1002, Collection of penalties, fees, late fees, and interest.

Specifically, Montana proposes to revise these sections as follows:

Revise 82-4-206, MCA, to provide that an applicant, permittee, or person with an interest that is or may be adversely affected may request a hearing before the board on decisions of the department pertaining to (a) approval or denial of an application for a permit pursuant to 82-4-231; (b) approval or denial of an application for a prospecting permit pursuant to 82-4-226; (c) approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225; (d) approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or (e) approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.

Revise 82-4-223, MCA, to delete "permit fee" from the title and delete the provision for a permit application fee, and for editorial changes.

Revise 82-4-225, MCA, to delete the requirement for an application fee for increased or reductions in permit area.

Revise 82-4-226, MCA, to delete the requirement for an application fee for prospecting permits.

Revise 82-4-227, MCA, to add "the national system of trails," Wild and Scenic Rivers Act study rivers and study river corridors, and Federal lands within National Forests, to areas where mining is prohibited (subject to valid existing rights).

Revise 82-4-231(9), MCA, to specify the Environmental Quality Board, or its hearing officer, as the authority to hold hearings on permit decisions, and to provide that hearings may be started (rather than held) within the 20-day timeframe.

Revise 82-4-232(6), MCA, concerning bond release applications to:

- (1) Change bond release requests to bond release applications;
- (2) Provide that a bond release application is administratively complete if it includes

- (i) The location and acreage of the land for which bond release is sought;
- (ii) The amount of bond release sought;
- (iii) A description of the completed reclamation, including the date of performance;
- (iv) A discussion of how the results of the completed reclamation satisfy the

requirements of the approved reclamation plan; and

(v) Information required by rules implementing this part.

(3) Provide that the Department (of Environmental Quality) notify the applicant in writing of its determination no later than 60 days after submittal of the application; if the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address; after an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(4) Provide that

any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall notify the permittee and the objector of its final decision.

(5) Provide that without prejudice to the rights of the objector or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(6) Provide that

for the purpose of the hearing under subsection (6)(d), the department may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) Provide that

if the applicant significantly modifies the application after the application has been determined to be administratively complete, the department shall conduct a new review, including an administrative completeness determination. A significant modification includes, but is not limited to:

(i) The notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(ii) A material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) A material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(8) Provide that the department conduct an inspection and evaluation of the reclamation work involved within 30 days of determining that the application is administratively complete or as soon as weather permits;

(9) Provide that

the department shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit

(10) Provide that

(i) The department shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the department determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the department shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes, but is not limited to:

(A) The notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) A material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) A material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(11) Delete existing detailed contents required for the public notification requirements for bond release requests; and

(12) Delete the provisions of existing 82-4-232(f)-(h) concerning hearings and appeal rights.

Revise 82-4-233, MCA, by deleting existing paragraph (5) concerning special revegetation requirements for land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984.

Revise 82-4-235(3)(a), MCA, to specify that special revegetation bond release criteria on certain lands are applicable only under a permit issued under this part.

Revise 82-4-251(3), MCA, to provide for a contested case hearing on a permit suspension or revocation by filing a request for hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or revocation; the order would be effective upon expiration of the period for requesting a hearing or, if a hearing is requested, upon issuance of a final order by the board; the hearing would be conducted in accordance with the requirements of Title 2, chapter 4, part 6, MCA.

Revise 82-4-251(5), MCA, to provide that informal public hearings on notices or orders that require cessation of mining must be requested by the person to whom the notice or order was issued. Further, if the Department receives a request for an informal public hearing 21 days after service of the notice or order, the period for holding the informal public hearing will be extended by the number of days after the 21st day that the request was received.

Revise 82-4-251(6), MCA, to change the provision allowing an alleged violator to apply for a review by the department to allow him to "request a hearing before the board," and delete existing requirements for Departmental investigation.

Revise 82-4-254(1), MCA, to provide individual administrative penalties for persons who purposely or knowingly, rather than willfully, authorize, order, or carry out violations. Further, such penalties must be determined in accordance with 82-4-1001, MCA.

Revise 82-4-254(2), MCA, to add provision that the department may not waive a penalty assessed under this section if the person or operator fails to abate the violation as directed under MCA 82-4-251.

Add new requirements at 82-4-254(3)(a), MCA, providing that to assess an administrative penalty, the Department must issue a notice of violation and penalty order to the person or operator, unless the penalty is waived under paragraph (2); further, the notice and order must specify the

provision of this part, rule adopted or order issued under this part, or term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a statement of the proposed administrative penalty; the notice and order must be served personally or by certified mail [service by mail is complete 3 business days after the date of mailing]; the notice and order become final unless, within 30 days after the order is served, the person or operator to whom the order was issued requests a hearing before the Board. Further add to paragraph (3)(a) a requirement that on receiving a request, the Board must schedule a hearing. Revise language at newly designated paragraph (3)(b) to indicate that only a person or operator issued a final order may obtain judicial review. Revise language at newly designated paragraph (3)(c) and paragraph (4) to allow the department, rather than the Attorney General, to file actions for collection, allow filing in the first judicial district (if agreed by the parties), and allow the department, rather than the Attorney General, to bring actions for judicial relief.

Revise 82–4–254(6) and (8), MCA, to provide criminal sanctions against persons who purposely or knowingly, rather than willfully, commit certain acts.

Add new paragraph 82–4–254(10), MCA, providing that within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department will issue a written release of civil liability for the violations for which the penalty was assessed.

Regarding the proposed revisions to MCA 82–4–254, Montana notes in a narrative explanation that the terms “purposely or knowingly” are used in the Montana Criminal Code, and “willfully” is not. Further, the changes in proposed MCA 82–4–254(3)(a) are for the purpose of converting the two-step process of assessing a penalty into a more streamlined one-step process. The Department would now issue a Notice of Violation and Administrative Penalty Order (NOV/APO) that would contain all of the relevant components from the existing two-step process. The NOV/APO would contain a notice of violation, findings of fact, conclusions of law, penalty assessment, and an order to pay a proposed penalty. The operator would have 30 days after issuance of the NOV/APO to submit an appeal. If an appeal is not submitted, the NOV/APO would become final, eliminating the need to issue separate findings and conclusions of law, and the penalty would be due in 30 days.

Add a new section 82–4–1001, MCA, as follows:

Penalty factors. (1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) The nature, extent, and gravity of the violation;

(b) The circumstances of the violation;

(c) The violator's prior history of any violation, which:

(i) Must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) Must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) May not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) The economic benefit or savings resulting from the violator's action;

(e) The violator's good faith and cooperation;

(f) The amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) Other matters that justice may require.

(2) Except for penalties assessed under 82–4–254, after the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) Except for penalties assessed under 82–4–254, the department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a “supplemental environmental project” is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82–4–141, 82–4–254, 82–4–361, and 82–4–441.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.

Add a new section 82–4–1002, MCA, as follows:

Collection of penalties, fees, late fees, and interest.

(1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of this chapter, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2)(a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17–4–103(3) may be added to the debt for which collection is being sought.

(b)(i) All money collected by the department of revenue is subject to the provisions of 17–4–106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in the statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

In various provisions mentioned above, Montana also proposes changes to paragraph numbering where provisions are proposed to be added or deleted or for clarity. Montana also proposes editorial revisions not specified above.

### 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 Montana program. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be considered or included in the Administrative Record.

#### 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.

#### Electronic Comments

Please submit Internet comments as an ASCII or MSWord file avoiding the use of special characters and any form of encryption. Please also include “Attn: SATS No. MT–026–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 April 11, 2006. 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 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 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 any Tribe, 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

State of Montana, under a Memorandum of Understanding with the Secretary of the Interior (the validity of which was upheld by the U.S. District Court for the District of Columbia), does have the authority to apply the provisions of the Montana regulatory program to mining of some coal minerals held in trust for the Crow Tribe. This proposed program amendment does not alter or address the terms of the MOU.

##### *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. 4321 *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 926**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 6, 2006.

**Allen D. Klein,**

*Director, Western Region.*

[FR Doc. E6-4360 Filed 3-24-06; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 100**

[CGD05-06-020]

RIN 1625-AA08

**Special Local Regulation for Marine Events; Nanticoke River, Sharptown, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes temporary special local regulations during the "Bo Bowman Memorial—Sharptown Regatta", a marine event to be held on the waters of the Nanticoke River near Sharptown, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Nanticoke River during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before April 26, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Fifth Coast Guard District office between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-06-020), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Coast Guard at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

On June 17 and 18, 2006, the Carolina Virginia Racing Association will sponsor the "Bo Bowman Memorial—Sharptown Regatta", on the waters of the Nanticoke River at Sharptown, Maryland. The event will consist of approximately 100 hydroplanes and runabouts conducting high-speed competitive races on the waters of the Nanticoke River between the Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN 24175). A fleet of spectator vessels normally gathers nearby to view the competition. Due to the need for vessel control before, during and after the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

**Discussion of Proposed Rule**

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Nanticoke River near Sharptown, Maryland. The regulated area includes the waters of the Nanticoke River between the Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN 24175). The temporary special local regulations will be enforced from 9:30 a.m. to 6:30 p.m. on June 17 and 18, 2006, and will restrict general navigation in the regulated area during the power boat race. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period. The Patrol Commander may allow non-participating vessels to transit the regulated area between races, when it is safe to do so. This regulated area is needed to control vessel traffic before, during and after the event to enhance the safety of participants, spectators and transiting vessels.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this