

Dated: April 12, 2006.

**Leonard Meier,**

*Acting Regional Director, Mid-Continent Region.*

■ For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

**PART 925—MISSOURI**

■ 1. The authority citation for part 925 continues to read as follows:

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

■ 2. Section 925.15 is amended in the table by adding a new entry in

chronological order by “Date of final publication” to read as follows:

**§ 925.15 Approval of Missouri regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
October 31, 2005	June 8, 2006	10 CSR 40–7.011(1)(C) and (D), (2)(A) and (B), (3)(C), (4) and (5), (6)(A)6., 8., & 9., (6)(B)1., 2., & 4. through 7., (6)(C)1. through 4., 8. & 9., (6)(D)1.F., 2., 2.B., 2.D.(I) through (III), 3., 5.C., 6., 8., and (7)(A); 10 CSR 40–7.021(1)(A), (2), (2)(A), (2)(B)3. through 6., (2)(C)2., (2)(D) and (E); 10 CSR 40–7.031(2)(E)1. and 2., (2)(E)2.C. & D., (3)(C), and (4) through (4)(B)2.; and 10 CSR 40–7.041.

[FR Doc. E6–8926 Filed 6–7–06; 8:45 am]  
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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 944**

[UT–043–FOR]

**Utah Regulatory Program**

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

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

**SUMMARY:** We are approving a revised amendment to the Utah regulatory program (the “Utah program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposed changes to the Utah Administrative Rules concerning permit change, renewal, transfer, sale and assignment, cross sections and maps, processing and approval of extensions to the approved permit area, determining civil penalty amounts, and assessing daily civil penalties. Utah revised its program to clarify and strengthen certain parts of the rules.

**DATES:** *Effective Date:* June 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Chief, Denver Field Division; telephone: (303) 844–1400, extension 1424; e-mail address: [jfulton@osmre.gov](mailto:jfulton@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background on the Utah 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 Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You also can find later actions concerning Utah’s program and program amendments at 30 CFR 944.10, 944.15 and 944.30.

**II. Submission of the Proposed Amendment**

By letter dated November 28, 2005, Utah sent us an amendment to its program (Administrative Record Number UT–1181) under SMCRA (30 U.S.C. 1201 *et seq.*). We received the amendment on December 28, 2005. Utah sent the amendment to make the changes at its own initiative. The State proposed to revise five sections of its coal rules.

In a revision of Utah Administrative Rule (Utah Admin. R.) 645–301–160, the State proposed to add a heading that reads, “Permit change, renewal, transfer, sale, and assignment.” Following that heading is a proposed reference to procedures to change, renew, transfer, assign, or sell existing coal mining and

reclamation permit rights that are found at Utah Admin. R. 645–303.

The amendment also proposed to change Utah’s permit application requirements for cross sections and maps at Utah Admin. R. 645–301–512.100. This change would allow preparation of certain cross sections and maps by a professional geologist or a qualified, registered, professional land surveyor. The State also proposed editorial changes to this section to make it read more clearly with the proposed substantive revisions described above.

A proposed revision to Utah Admin. R. 645–303–222 would require applications for extensions to the approved permit area to be processed and approved using the procedural requirements of Utah Admin. R. 645–303–226 for review and processing of significant permit revisions. As part of this proposed change, the State also proposed to remove the requirement at Utah Admin. R. 645–303–222 that extensions to the approved permit area, except for incidental boundary changes, be processed and approved as new permit applications and not be approved under Utah Admin. R. 645–303–221 through R. 645–303–228.

Another revision proposed in this amendment would change Utah’s schedule of points and corresponding dollar amounts for civil penalty assessments found at Utah Admin. R. 645–401–330. The proposed revision changed the range of civil monetary penalties from \$10 through \$3,560 to \$22 through \$4,840. It also changed the range of assessed points corresponding to those civil monetary penalties from 1 through 87 points to 1 through 64 points.

Finally, the State’s amendment proposed a change at Utah Admin. R. 645–401–410 that would require an assessment officer to assess a civil penalty for a minimum of two separate

days for any violation that continues for two or more days and is assigned more than 64 points. This proposed change also would remove the existing threshold of 80 points.

We announced receipt of the proposed amendment in the February 13, 2006, **Federal Register** (71 FR 7489; Administrative Record Number UT-1192). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 15, 2006. We received comments from two Federal agencies.

We identified a concern about proposed Utah Admin. R. 645-303-222 during our review of the amendment. As proposed, the rule would require the Division of Oil, Gas and Mining (DOGM) to process and approve applications for permit area extensions, except incidental boundary revisions, using the procedural requirements for permit revisions at Utah Admin. R. 645-303-226. The amendment would remove the existing requirement that DOGM process and approve permit area extensions, except incidental boundary revisions, through applications for new permits. The proposed rule is not consistent with Utah Code Annotated (UCA) section 40-10-12(1)(c), which requires permit area extensions, except incidental boundary revisions, to be made by application for another permit. We notified Utah of our concern in a telephone conversation on January 23, 2006 (Administrative Record Number UT-1190), and an e-mail message dated February 14, 2006 (Administrative Record Number UT-1193).

Utah responded in a letter dated February 16, 2006 (Administrative Record Number UT-1194), by withdrawing the proposed change to Utah Admin. R. 645-303-222 from amendment UT-043-FOR.

We did not reopen the public comment period for the revised amendment because Utah's withdrawal of the proposed change to Utah Admin. R. 645-303-222 only reduced the scope of the amendment and leaves the existing approved rule in effect and unchanged.

### III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as revised.

#### A. Minor Revision to Utah's Rules

Utah proposed a minor editorial change to the following previously-approved rule by adding a new heading and rule at Utah Admin. R. 645-301-160. The new rule is an editorial addition that merely restates the heading of Utah Admin. R. 645-303 and directs the reader to existing rules for permit change, renewal, transfer, sale and assignment that are in that section.

Because this change is minor, we find that it will not make Utah's rules less effective than the corresponding Federal regulations.

#### B. Revisions to Utah's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Utah proposed revisions to the following rule containing language that is the same as or similar to the corresponding sections of the Federal regulations:

Utah Admin. R. 645-301-512.100, preparation and certification of certain cross sections and maps required in permit applications (corresponds to 30 CFR 780.14(c) and 784.23(c) in the Federal regulations).

Because this proposed rule contains language that is the same as or similar to the corresponding Federal regulations, we find that it is no less effective than the corresponding Federal regulations.

#### C. Revisions to Utah's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations and Statute

##### 1. Utah Admin. R. 645-303-222, Review and Approval of Extensions to the Approved Permit Area

Proposed Utah Admin. R. 645-303-222 would require DOGM to process and approve permit area extensions (except incidental boundary changes) using procedures for significant permit revisions found at Utah Admin. R. 645-303-226. The proposed revision also would remove the existing requirement that DOGM process permit area extensions (except incidental boundary changes) through applications for new permits and not under the procedures for permit changes found at Utah Admin. R. 645-303-221 through R. 645-303-228.

Federal counterparts to existing Utah Admin. R. 645-303-222 are found at section 511(a)(3) of SMCRA and in the Federal regulations at 30 CFR 774.13(d). Both Federal provisions require permit area extensions, except incidental boundary revisions, to be processed as applications for new permits.

Title 40, Chapter 10, *et seq.*, entitled, "Coal Mining and Reclamation," of the Utah Code Annotated is the primary underlying statutory authority for Utah's coal mining rules found at Title R645 *et seq.* UCA 40-10-12(1)(c) states "[a]ny extensions to the area covered by the permit, except incidental boundary revisions, must be made by application for another permit." This provision is Utah's statutory counterpart to existing Utah Admin. R. 645-303-222.

As proposed, Utah Admin. R. 645-303-222 is not consistent with the plain wording of State law at UCA 40-10-12(1)(c). We expressed our concern in a telephone conversation with Utah on January 23, 2006 (Administrative Record Number UT-1190) and in an e-mail message dated February 14, 2006 (Administrative Record Number UT-1193). In a letter dated February 16, 2006, (Administrative Record Number UT-1194), the State chose to withdraw this proposed rule from the amendment, recognizing the need to revise the Utah Code Annotated. Withdrawal of the proposed change to Utah Admin. R. 645-303-222 from amendment UT-043-FOR leaves the existing, approved rule unchanged and in effect, notwithstanding the Board of Oil, Gas and Mining's formal promulgation of the revised rule effective February 6, 2004 (noted in a January 5, 2006, telephone conversation; Administrative Record Number UT-1186). As originally submitted with this amendment, proposed Utah Admin. R. 645-303-222 is not part of the approved Utah regulatory program.

##### 2. Utah Admin. R. 645-401-330, Point System for Penalties and Determination of Civil Penalty Amounts

Utah proposed to revise its point system for civil penalties at Utah Admin. R. 645-401-330. The State's approved system assesses from 1 to 100 points for violations and assigns corresponding civil monetary penalties of \$10 to \$3,560 to each number in that range of points. The maximum monetary penalty is reached at the 87 points level and corresponds to assessed totals of 87 to 100 points, as indicated by a "plus" (+) after the number 87. This amendment would change the assessed point total at which the maximum penalty is reached from 87 to 64 points and would increase most civil monetary penalties, with a maximum penalty of \$4,840 reached at 64 points. The amendment also would remove the "plus" (+), leaving the 64 points level corresponding to the maximum penalty without specifically indicating what penalty or penalties would correspond

to assessments totaling 65 through 100 points.

The counterpart Federal regulation at 30 CFR 845.14 prescribes a very similar civil penalty point system, though the range of points and penalty amounts differ somewhat. That regulation assigns a maximum penalty of \$6,500 to the assessed total of 70 points and does not specifically indicate penalty amounts that correspond to assessments totaling 71 points through the maximum possible total of 85 points. We increased the civil monetary penalties in this regulation most recently on November 22, 2005 (70 FR 70698), as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701).

The civil penalty point system in Utah's proposed rule need not be the same as the counterpart Federal civil penalty point system. In the November 22, 2005, **Federal Register** (*Id.*, at 70699), we said—

[s]ection 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties which are 'no less stringent than' those set forth in SMCRA. Our regulations at 30 CFR 840.13(a) specify that each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845. However, in a 1980 decision on OSM's regulations governing [civil monetary penalties], the U.S. District Court for the District of Columbia held that because section 518 of SMCRA fails to enumerate a point system for assessing civil penalties, the imposition of this requirement upon the States is inconsistent with SMCRA. In response to the Secretary's request for clarification, the Court further stated that it could not uphold requiring the States to impose penalties as stringent as those appearing in 30 CFR 845.15. Consequently, we cannot require that the [civil monetary penalty] provisions contained in a State's regulatory program mirror the penalty provisions of our regulations at 30 CFR 845.14 and 845.15.

In a similar discussion of civil penalty point systems in the December 15, 1980, **Federal Register**, we added that, in the same 1980 decision (*In re: Permanent Surface Mining Regulations Litigation*, Civil Action No. 79-114, May 16, 1980; "round 2") the Court said—

[S]tates need only develop a penalty system incorporating the four criteria in Section 518(a) of SMCRA, the procedural requirements of 30 CFR 845.17 through 845.20, the requirement of 845.12 that all cessation orders must be assessed, and the requirement of 845.15(b) that a minimum of \$750.00 per day be assessed for all cessation orders issued for failure to abate a violation.

The four criteria of section 518(a) of SMCRA for determining penalty

amounts are history of previous violations, seriousness of a violation, negligence, and demonstrated good faith.

Utah proposed to change its existing civil penalty point system and increase most penalty amounts in this amendment, not remove them. Its previously approved procedures for assessing violations remain otherwise unchanged, including the four assessment components of history, seriousness, negligence, and good faith and requirements for cessation order assessments and daily penalties for failure to abate cessation orders. As such, the proposed rule meets the objective of civil penalties as stated in 30 CFR 845.2, which is to "deter violations and to ensure maximum compliance with the terms and purposes of [SMCRA] on the part of the coal mining industry." We therefore find that the civil penalty provisions proposed in this amendment at Utah Admin. R. 645-401-330 are no less stringent than those set forth in section 518 of SMCRA and are consistent with 30 CFR part 845.

### 3. Utah Admin. R. 645-401-410, Assessing Daily Civil Penalties

Proposed Utah Admin. R. 645-401-410 would require DOGM to assess a civil penalty for a minimum of two separate days for any violation that continues for two or more days and is assigned more than 64 points, instead of the existing 80 points. This proposed change would make the rule consistent with changes at Utah Admin. R. 645-401-330 that also are proposed in this amendment. As described in the previous finding, one change the State also proposed at Utah Admin. R. 645-401-330 would reduce the assessed total of points at which it imposes the maximum civil monetary penalty from 87 points to 64 points.

The wording of proposed Utah Admin. R. 645-401-410 is very similar to the Federal counterpart regulation at 30 CFR 845.15. Utah's rule refers to factors listed in Utah Admin. R. 645-301-300 that an assessment officer considers when assessing daily civil penalties, including history of violations, seriousness, negligence, and good faith. It also requires consideration of the extent to which the permittee gained any economic benefit by not complying and assessing civil penalties for violations assigned more than 64 points. The primary differences are the proposed State rule's references to other State rules and the threshold assessed total of 64 points. Referenced Utah Admin. R. 645-401-300 and 645-401-320 are Utah's rules for its civil penalty

point system and are the State's counterparts to referenced 30 CFR 845.13 and 845.13(b) in the Federal regulations. Proposed Utah Admin. R. 645-401-410 and counterpart 30 CFR 845.15 set their respective threshold totals of more than 64 and 70 points, as one of two criteria for imposing a civil monetary penalty for at least two separate days.

Utah's proposed rule is very similar to the counterpart Federal regulation and need not be exactly the same. As we observed in the previous finding, we cannot require States' civil penalty systems to mirror the Federal regulations. Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties that are no less stringent than those set forth in SMCRA. Utah proposed in this amendment to revise its existing civil penalty point system, not remove it. Its previously approved procedures for assessing violations remain otherwise unchanged. The proposed rule meets the objective of civil penalties as stated in 30 CFR 845.2, which is to "deter violations and to ensure maximum compliance with the terms and purposes of [SMCRA] on the part of the coal mining industry." Therefore, we find the civil penalty provision proposed at Utah Admin. R. 645-401-410 is no less stringent than section 518(i) of SMCRA and is consistent with 30 CFR part 845.

## IV. Summary and Disposition of Comments

### Public Comments

We asked for public comments on the amendment (Administrative Record Number UT-1185), but did not receive any.

### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Utah program (Administrative Record Number UT-1185).

The Utah State Office of the U.S. Department of the Interior, Bureau of Land Management (BLM), submitted comments on the amendment in a letter dated January 20, 2006 (Administrative Record Number UT-1188). BLM commented on Utah's proposed changes to Utah Admin. R. 645-301-512.100 and 645-401-330.

Concerning proposed Utah Admin. R. 645-301-512.100, BLM commented that it has found it expedient to require all but geologic materials to be certified by a professional mining engineer

registered in Utah, noting that such engineers typically are in managerial positions at mining operations. It added that Utah requires experience and testing to demonstrate competence unique to the mining field that someone trained in civil, mechanical, or other engineering or scientific disciplines might not have. BLM also commented that it only accepts certifications by professional land surveyors of materials for land ownership or mine locations, noting that such surveyors typically are not qualified by training or experience and are not licensed to certify mining-related or geologic materials.

Proposed Utah Admin. R. 645-301-512.100 would allow certain cross sections and maps to be prepared by, or under the direction of, and certified by, qualified, registered, professional engineers, professional geologists, or qualified, registered, professional land surveyors with assistance from experts in related fields such as hydrology, geology and landscape architecture. Black's Law Dictionary (7th Ed.; 1999) defines "qualified" as

1. Possessing the necessary qualifications; capable or competent \* \* \*.

Black's Law Dictionary defines "qualification" as

1. The possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function \* \* \*.

The proposed rule specifically requires registered, professional land surveyors who would prepare or direct the preparation of, and certify, certain cross sections and maps to be "qualified" to do those functions and to do them with assistance from experts in related fields such as hydrology, geology and landscape architecture. In context of the proposed rule and the definitions quoted above, qualified, registered professional land surveyors would be capable or competent individuals who, with expert assistance, have the capacity and are fit to prepare or direct the preparation of, and certify, certain cross sections and maps.

Further, as we stated in finding III. B. of this final rule, Utah's proposed rule contains language that is the same as or similar to the language of the corresponding Federal regulation at 30 CFR 780.14(c) and 784.23(c). Those Federal regulations allow qualified, registered, professional land surveyors to prepare or direct the preparation of, and certify, certain cross sections and maps in any State that authorizes them to do so with assistance from experts in related fields such as landscape architecture. We assume that, by

proposing Utah Admin. R. 645-303-512.100, Utah is authorizing qualified, registered, professional land surveyors to perform these functions with appropriate expert assistance in accordance with all applicable State standards for professional qualifications and conduct. Moreover, the standard we use for review of Utah's program is that it be no less effective than the Federal regulations and no less stringent than SMCRA. In finding III.B of this final rule, we found proposed Utah Admin. R. 645-303-512.100 to be no less effective than the counterpart Federal regulations at 30 CFR 780.14(c) and 784.23(c) because it is worded the same as or similar to those regulations. We cannot require Utah to have rules that are more effective than the Federal regulations or more stringent than SMCRA.

With regard to proposed Utah Admin. R. 645-401-330, BLM's comment assumed the proposed increases in civil penalties reflect inflationary factors and noted that it otherwise had no specific comments except to say that the increased civil monetary penalties will have some minimal effect "on the viability of certain coal energy resources and will probably be borne by the end consumers of energy."

As we state below in the Procedural Determinations in Section VI of this final rule, a Statement of Energy Effects is not required for this rule under *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy* because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy. Further, as we noted previously in our finding at Part III.C.2. in this final rule, section 518(i) of SMCRA requires each State program to have civil penalty provisions that are no less stringent than those in SMCRA. The Federal regulations at 30 CFR 840.13(a) further specify that each State program must have penalties that are no less stringent than those in section 518 of SMCRA and that are consistent with 30 CFR part 845. As proposed at Utah Admin. R. 645-401-330 in this amendment, we find Utah's civil monetary penalties are no less stringent than those set forth in section 518 of SMCRA and are consistent with 30 CFR part 845.

We also received a comment from the Intermountain Region of the U.S. Department of Agriculture, Forest Service, in an e-mail message dated February 1, 2006 (Administrative Record Number UT-1191). The Forest Service commented that it supported the changes proposed in UT-043-FOR, noting that they appear to be positive

improvements to the State's rules. It also supported the proposed rule (Utah Admin. R. 645-301-512.100) that would allow a professional geologist to certify certain cross sections and maps, and said it assumed the proposed change is tied to Utah's new process for certifying professional geologists. We assume that, by proposing Utah Admin. R. 645-303-512.100, Utah is authorizing professional geologists to prepare, direct the preparation of, and certify certain cross sections and maps in accordance with all applicable State standards for professional qualifications and conduct. As noted in finding III.B. of this final rule, we find proposed Utah Admin. R. 645-301-512.100 is no less effective than counterpart 30 CFR 780.14(c) and 784.23(c) because it contains language that is the same as or similar to the language of those corresponding Federal regulations.

#### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, we asked EPA for its comments on the amendment under 30 CFR 732.17(h)(11)(i) (Administrative Record Number UT-1183). 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 January 4, 2006, we requested the ACHP's comments on Utah's amendment (Administrative Record Number UT-1184). We requested the SHPO's comments in a letter dated January 25, 2006 (Administrative Record Number UT-1189). Neither the ACHP nor the SHPO responded to our requests.

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

Based on the above findings, we approve Utah's November 28, 2005, amendment, as revised on February 16, 2006.

To implement this decision, we are amending the Federal regulations at 30

CFR part 944, which codify decisions concerning the Utah 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 demonstrates 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.

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulation at 30 CFR 732.17(g) prohibits any changes to approved State programs that are not approved by OSM. In the oversight of the Utah program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Utah to enforce only approved provisions.

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

### *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 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and

its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### *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 on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied on 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; 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 State submittal which is the subject of this rule is based on 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 on the fact that the State submittal, which is the subject of this rule, is based on 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 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 27, 2006.

Allen D. Klein, Regional Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 944 is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

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

2. Section 944.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 944.15 Approval of Utah regulatory program amendments

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Table with 3 columns: Original amendment submission date, Date of final publication, Citation/description. Row 1: November 28, 2005 and February 16, 2006; June 8, 2006; Utah Adm. R. 645-301-160, 645-301-512.100, 645-401-330, and 645-401-400.

[FR Doc. E6-8927 Filed 6-7-06; 8:45 am] BILLING CODE 4310-05-P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1151

Bylaws

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has adopted an amendment to its bylaws. The amendment was adopted to update and improve the Board's operations.

DATES: This rule is effective June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Lisa Fairhall, Access Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004-1111. Telephone number 202-272-0046 (voice); 202-272-0082 (TTY). E-mail address: Fairhall@access-board.gov.

SUPPLEMENTARY INFORMATION: In March 2006, the Access Board amended its bylaws to codify its practice of electing Vice-Chairs for subject matter committees. This amendment was adopted to update and improve the Board's operating procedures. Because the amendment is to the Board's internal rules of organization, procedure, or practice, advance notice and opportunity for public comment are not required by the Administrative Procedures Act (section 553(b)). The amendment is being published so that all interested persons will be fully

informed about the procedures governing the Access Board.

List of Subjects in 36 CFR Part 1151

Authority delegations (Government agencies), Organization and functions (Government agencies).

Authorized by vote of the Access Board on March 15, 2006.

David L. Bibb, Chairperson, Architectural and Transportation Barriers Compliance Board.

Pursuant to 29 U.S.C. 792, as amended, and for the reasons set forth in the preamble, chapter XI of title 36 of the Code of Federal Regulations is amended as follows:

PART 1151—BYLAWS

1. The authority citation for part 1151 continues to read as follows:

Authority: 29 U.S.C. 792.

2. Revise paragraph (b)(2) of § 1151.6 to read as follows:

§ 1151.6 Committees.

\* \* \* \* \*

(b) \* \* \*

(2) Chair, Vice-Chair. The Chair and Vice-Chair of a subject matter committee shall be elected by the Board after the election of the Chair and Vice-Chair of the Board. The Chair of a subject matter committee shall serve as a member of the Board's Executive Committee.

\* \* \* \* \*

[FR Doc. E6-8887 Filed 6-7-06; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1548

[Docket No. TSA-2004-19515; Amendment Nos. 1548-2]

RIN 1652-AA23

Air Cargo Security Requirements; Correction

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the final rule published in the Federal Register on May 26, 2006. That rule enhances and improves the security of air cargo transportation by requiring airport operators, aircraft operators, foreign air carriers, and indirect air carriers to implement security measures in the air cargo supply chain as directed under the Aviation and Transportation Security Act. The final rule also amends the applicability of the requirement for a "twelve-five" security program for aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to those aircraft with a maximum certificated takeoff weight of more than 12,500 pounds to conform to recent legislation. TSA inadvertently left out the amendatory instruction to remove the word "passenger" in § 1548.1. This document adds this amendatory change to part 1548.

DATES: Effective October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Tamika McCree, Office of Transportation Sector Network Management (TSA-28), Transportation Security Administration, 601 South