

(2) Color additives not subject to certification and not otherwise required by applicable regulations in part 73 of this chapter to be declared by their respective common or usual names may be declared as “Artificial Color,” “Artificial Color Added,” or “Color Added” (or by an equally informative term that makes clear that a color additive has been used in the food). Alternatively, such color additives may be declared as “Colored with \_\_\_\_\_” or “\_\_\_\_\_ color,” the blank to be filled in with the name of the color additive listed in the applicable regulation in part 73 of this chapter.

\* \* \* \* \*

Dated: December 24, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 926

[SATS No. MT-028-FOR; Docket ID No. OSM-2008-0018]

#### Montana Regulatory Program

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

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

**SUMMARY:** We are approving an amendment to the Montana regulatory program (the “Montana program”) under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or “the Act”). Montana proposed revisions to its statute as discussed in **SUPPLEMENTARY INFORMATION, II.** Proposed Amendment, to clarify ambiguities and improve operational efficiency.

**DATES:** *Effective Date:* January 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Casper Field Office Director Jeffrey Fleischman, Telephone: 307/261-6550, Internet address: [JFleischman@osmre.gov](mailto:JFleischman@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement’s (OSM’s) Findings
- IV. Summary and Disposition of Comments
- V. OSM’s Decision
- VI. 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 in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions at 926.15, 926.16, and 926.30.

#### II. Submission of the Proposed Amendment

By letter dated July 7, 2008, Montana sent us an amendment to its program (Administrative Record No. MT-025-01, under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment for changes made at its own initiative. The provisions of the Montana Strip and Underground Mine Reclamation Act that Montana proposed to revise are within MCA 82-4-232, Area mining required—bond—alternative plan.

We announced receipt of the proposed amendment in the August 26, 2008, **Federal Register** 73 FR 50265. 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 (Administrative Record No. MT-25-05). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 25, 2008. We received comments from one Federal agency.

#### 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.

##### A. Minor Revisions to Montana’s Statute

Montana proposed minor wording changes to the following previously-approved Montana Strip and Underground Mine Reclamation Act: MCA 82-4-232(3) and (4). Area mining required—bond—alternative plan.

Because these changes are minor, we find that they will not make Montana’s statute less stringent than SMCRA.

##### B. Revisions to Montana’s Statute That Have the Same Meaning as the Corresponding Provisions of SMCRA

Montana proposed revisions to its statute at MCA 82-4-232(6)(l) requiring detailed written findings when reclamation is not approved. The revised language is similar and corresponds to section 519(d) of SMCRA; and therefore, we approve it.

##### C. Revision to Montana’s Statute That Is Not the Same as SMCRA

Montana statute at MCA 82-4-232(5)(k). Requirement to release performance bonds.

MCA at 82-4-232(k)(5) states that the Department may release the bond in whole or in part if it is satisfied the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:

Montana proposes to replace the existing term “may” in its statute with the more definitive term “shall.” The language in both SMCRA at Section 519 and the Federal regulations at 30 CFR 800.40(c) use the phrase “the regulatory authority may release all or part of the bond \* \* \*.” (Emphasis added). Montana’s proposed statutory change does not alter its existing requirements that all required reclamation must be completed prior to the release of the bond, the public must have been provided with the opportunity to request a hearing to contest the pending release, and the performance bond is released either in whole or in part only when the entire process is completed. With the use of the term “shall”, Montana provides the operator conducting the required reclamation with clear assurance that bond will be released once all the requirements are met including the appropriate request by the operator. The added assurance that bond release will occur is also important to financial institutions providing funds for the reclamation bond. Surety bonds have become more difficult to obtain. Montana’s proposed use of the term “shall” clarifies the terms of the bond. We have, in the past, approved the use of the term “shall” rather than “may” with respect to a State’s decision to release all or part of a reclamation bond. For the reasons discussed above, we are approving Montana’s proposed change to MCA 82-4-232(k)(5) to require bond release with use of the term “shall” in place of the term “may”.

#### IV. Summary and Disposition of Comments

##### Public Comments

We asked for public comments on the amendment but did not receive any (Administrative Record No. MT–25–03).

##### 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 Montana program (Administrative Record Document ID No. MT–25–03). One comment letter was received.

The Rocky Mountain Regional Office of the U.S. Bureau of Indian Affairs replied in an August 1, 2008, letter (Administrative Record No. MT–25–04). It states that the proposed changes appear to be very beneficial to the program's mission and that "we have no reason to object to the revision being approved."

##### 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.*).

On July 21, 2008, we asked for concurrence on the amendment (Administrative Record Document ID No. MT–25–03). 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 July 21, 2008, we requested comments on Montana's amendment (Administrative Record Document ID No. MT–25–03), but neither responded to our request.

#### V. OSM's Decision

Based on the above findings, we approve Montana's July 7, 2008, amendment.

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 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.

#### VI. Procedural Determinations

##### Executive Order 12630—Takings

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

##### Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (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 CFR 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) *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: November 25, 2008.

**Allen D. Klein,**

*Regional Director, Western Region.*

■ 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 “Date of Final Publication” to read as follows:

**§ 926.15 Approval of Montana’s regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
July 7, 2008 .....	January 5, 2009 .....	Montana Strip and Underground Mine Reclamation Act 82–4–232(3) and (4), 82–4–232 (5)(k), 82–4–232(5)(l).

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**POSTAL REGULATORY COMMISSION**

**39 CFR Part 3020**

[Docket Nos. MC2009–13 and CP2009–17; Order No. 158]

**New Competitive Product**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently filed Postal Service request to add Express Mail & Priority Mail Contract 3 to the Competitive Product List. The Postal Service has also filed one related contract. This notice addresses procedural steps associated with these filings.

**DATES:** Comments due January 5, 2008.

**ADDRESSES:** Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On December 19, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail & Priority Mail Contract 3 to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Express Mail & Priority Mail Contract 3 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2009–13. The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–17.

*Request.* The Request incorporates (1) A redacted version of the Governors’ Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the Mail Classification Schedule product list; (4) a statement of supporting justification as

required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).<sup>2</sup> Substantively, the Request seeks to add Express Mail & Priority Mail Contract 3 to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. *Id.*, Attachment D. Thus, Ms. Parks contends there will be no issue of subsidization of competitive products

<sup>2</sup> Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Express Mail and Priority Mail Services (Governors’ Decision No. 08–23). The Governors’ Decision includes an attachment which provides an analysis of the proposed Express Mail and Priority Mail Contract 3 and certification of the Governors’ vote. Attachment B is the redacted version of the contract. Attachment C shows the requested changes to the Mail Classification Schedule product list. Attachment D provides a statement of supporting justification for the Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

<sup>1</sup> Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, December 19, 2008 (Request).