

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 basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

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

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

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the

National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State has a special reclamation tax of \$0.074 per ton of clean coal mined which is due to expire on June 30, 2009. The tax is used to reclaim bond forfeiture sites in the State. On May 4, 2009, the Governor signed into law a bill that will reinstate and increase the special reclamation tax to \$0.144 per ton of clean coal mined. The additional \$0.07 tax is being removed, and the previous one-year expiration period for the special reclamation tax is being deleted. Under the amended language, the Legislature will review the special reclamation tax every two years to determine whether the tax should be continued. The tax is payable by all operators mining coal in West Virginia, regardless of size. The tax, which is an important source of revenue for the State's alternative bonding system, is used to supplement reclamation bond amounts in the event of forfeiture.

*Small Business Regulatory Enforcement Fairness Act*

Based upon the above analysis and discussion, we have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual

effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

*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 analysis performed under various laws and executive orders for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 15, 2009.

**Thomas D. Shope,**  
*Regional Director, Appalachian Region.*

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

**PART 948—WEST VIRGINIA**

■ 1. The authority citation for part 948 continues to read as follows:

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

■ 2. Section 948.15 is amended by adding a new entry to the table in chronological order by "Date of publication of final rule" to read as follows:

**§ 948.15 Approval of West Virginia regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
* * May 28, 2009	* * July 22, 2009	* * W. Va. Code 22–3–11(h)(1) (interim approval).

[FR Doc. E9–16796 Filed 7–21–09; 8:45 am]  
BILLING CODE 4310–05–P

**POSTAL SERVICE**

**39 CFR Part 111**

**Express Mail Refunds for Shipments of Live Animals**

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising its standards for postage refunds for Express Mail® shipments of live animals in an effort to maintain the economic viability of shipping animals via Express Mail service.

**DATES:** *Effective Date:* September 8, 2009.

**FOR FURTHER INFORMATION CONTACT:** Joel Rosen, 202–268–4329 or Monica Grein, 202–268–8411.

**SUPPLEMENTARY INFORMATION:** On April 14, 2009, the Postal Service published a proposed rule in the **Federal Register** (74 FR 17128–17129) inviting comments on a revision to change the postage refund standards for Express Mail shipments of live animals delivered or attempted to be delivered within 3 days

of the date of mailing. After reviewing the comments, and upon further consideration of the proposed revisions, the Postal Service has decided to adopt the proposed regulations with minor revisions.

As noted in the Supplementary Information section of the proposed rule, the Postal Service is revising the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to change the postage refund standards for Express Mail shipments of live animals delivered or attempted to be delivered within 3 days of the date of mailing. In some instances, the Postal Service must reroute Express Mail shipments of live animals to alternative flights or routes in order to protect the well-being of live animals. This is particularly necessary if other shipments on the same flight contain dry ice or solid carbon dioxide, which will evaporate en route and may displace oxygen. If live animals were shipped in the same cargo hold, the carbon dioxide could cause asphyxiation. The use of alternative flights and rerouting to protect the well-being of the live animals can delay shipments. Therefore, even though the live animals arrive as promptly as possible and alive, these shipments may not meet the scheduled delivery date. In those instances, some mailers then apply for full postage refunds.

Currently, postage refunds for Express Mail shipments of live animals are granted based on the next-day or second-day delivery date scheduled at the time of mailing. This current postage refund policy does not account for the flight changes that may occur to protect the well-being of the animals. Therefore, under this final rule, postage refunds will not be available for Express Mail shipments of live animals delivered or attempted to be delivered within 3 days from the date of mailing. Postage refund requests for Express Mail shipments of live animals delivered after 3 days from the date of mailing may be granted.

**Evaluation of Comments Received**

The Postal Service received three sets of comments. One commenter suggested we stop shipping animals altogether. The Postal Service has determined that this suggestion is outside the scope of this final rule.

One commenter suggested we add the proposed language for 601.9.3.4 to all the subsections under 601.9.3. The Postal Service added the proposed language only to the adult fowl section because this is the only type of animal for which Express Mail shipment is required. To be consistent, the Postal Service has decided to remove the

proposed language from the adult fowl section and address the refund policy in the Postage Refund section only.

The commenter also suggested that DMM section 601.9.3.2 is inconsistent with the proposed rules in that the proposal allows for an extended arrival time. The Postal Service believes that this suggestion does not recognize the limited purpose of this final rule. While the new rule extends the arrival time of Express Mail shipments of live animals before refunds may be granted, the acceptance time conditions as indicated in 601.9.3 remain unchanged. At the time of acceptance, the Postal Service cannot predict whether the shipment will be delayed due to procedures taken to preserve the life of the contents. Therefore, the dispatch, transportation, and delivery processes must continue to be governed by the estimated service standard provided at the time of mailing.

Two commenters expressed concern regarding purposeful delays of live animal shipments. The Postal Service is not changing the way we handle live animals and is not making any operational changes. Our first priority is to keep live animals alive, and we will continue to provide the most expeditious handling that meets that priority.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

**PART 111—[AMENDED]**

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

**100 Retail Mail Letters, Cards, Flats, and Parcels**

\* \* \* \* \*

**110 Retail Mail Express Mail**

\* \* \* \* \*

**114 Postage Payment Methods**

\* \* \* \* \*

**3.0 Postage Refunds**

**3.1 Postage Not Refunded**

[Revise the introductory paragraph of 3.1 to read as follows:]

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

[Revise the first sentence of item a, and add a new item c as follows:]

a. If the item was properly detained for law enforcement purpose; strike or work stoppage; delayed because of an incorrect ZIP Code or address; forwarding or return service was provided after the item was made available for claim; delay or cancellation of flights. \* \* \*

\* \* \* \* \*

c. The shipment contained live animals and was delivered or delivery was attempted within three days of the date of mailing as shown in the “Date In” box on Label 11.

\* \* \* \* \*

**400 Commercial Mail Parcels**

\* \* \* \* \*

**410 Commercial Parcels Express Mail**

\* \* \* \* \*

**414 Postage Payment and Documentation**

\* \* \* \* \*

**3.0 Postage Refunds**

[Revise the introductory paragraph of 3.0 to read as follows:]

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

[Revise the first sentence of item a and add a new item c as follows:]

a. If the item was properly detained for law enforcement purpose; strike or work stoppage; delayed because of an incorrect ZIP Code or address; forwarding or return service was provided after the item was made available for claim; delay or cancellation of flights. \* \* \*

\* \* \* \* \*

c. The shipment contained live animals and was delivered or delivery was attempted within three days of the date of mailing as shown in the “Date In” box on Label 11.

\* \* \* \* \*

**600 Basic Standards for All Mailing Services**

\* \* \* \* \*

**604 Postage Payment Methods**

\* \* \* \* \*

**9.0 Refunds and Exchanges**

\* \* \* \* \*

**9.2 Postage and Fee Refunds**

\* \* \* \* \*

**9.2.4 Full Refund**

A full refund (100%) may be made when:

\* \* \* \* \*

[Revise item 1 to read as follows:]

1. Express Mail is not delivered according to the applicable service standard, except as provided in 114.3.1 and 414.3.0. \* \* \*

\* \* \* \* \*

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9-17124 Filed 7-21-09; 8:45 am]

BILLING CODE 7710-12-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[HI-126-NBK; FRL-8916-9]

**Approval and Promulgation of Air Quality Implementation Plans; State of Hawaii; Update to Materials Incorporated by Reference**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is updating the materials submitted by the State of Hawaii that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State of Hawaii and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located EPA Headquarters in Washington, DC, and the Regional Office.

**DATES:** *Effective Date:* This action is effective July 22, 2009.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations and online at EPA Region IX Web site:

Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street San Francisco, CA 94105-3901.  
Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Headquarters Library, Room Number

3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460.

Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) *Docket/Telephone number:* (202) 566-1742; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:**

Cynthia G. Allen, (415) 947-4120 or by e-mail at [allen.cynthia@epa.gov](mailto:allen.cynthia@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

The SIP is a living document which the State revises as necessary to address the unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On August 4, 2005 (70 FR 44852), as corrected on August 23, 2005 (70 FR 49377), EPA published a document in the **Federal Register** beginning the new IBR procedure for the State of Hawaii. Today's action is an update to the August 4, 2005 document.

**II. EPA Action**

In this document, EPA is doing the following:

A. Announcing an update to the IBR material as of May 1, 2009; and

B. Revising the entries in paragraphs 52.620(b) and (c) to reflect this update.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies

provisions which are already in effect as a matter of law. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Likewise, there is no purpose served by delaying the effective date of this action. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

**III. Statutory and Executive Order Reviews****A. General Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This rule also does not have tribal implications because it will not have a substantial direct effect 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045, "Protection of Children from