

commingled with positions in commodity contracts of the futures account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), then the former positions (and the relevant money, securities, and/or other property) shall be treated, for purposes of this part, as being held in an account of the futures account class.

\* \* \* \* \*

(oo) *Cleared OTC derivatives* shall mean positions in commodity contracts that have not been entered into or traded on a contract market (as such term is defined in § 1.3(h) of this chapter) or on a derivatives transaction execution facility (within the meaning of Section 5a of the Act), but which nevertheless are submitted by a commodity broker that is a futures commission merchant (as such term is defined in § 1.3(p) of this chapter) for clearing by a clearing organization (as such term is defined in this section), along with the money, securities, and/or other property margining, guaranteeing, or securing such positions, which are required to be segregated, in accordance with a rule, regulation, or order issued by the Commission, or which are required to be held in a separate account for cleared OTC derivatives only, in accordance with the rules or bylaws of a clearing organization (as such term is defined in this section).

4. In § 190.07, revise paragraph (b)(2)(viii) to read as follows:

**§ 190.07 Calculation of allowed net equity.**

(b) \* \* \*

(2) \* \* \*

(viii) Subject to paragraph (b)(2)(ix) of this section, the futures accounts, leverage accounts, options accounts, foreign futures accounts, and cleared OTC derivatives accounts of the same person shall not be deemed to be held in separate capacities: *Provided, however,* That such accounts may be aggregated only in accordance with paragraph (b)(3) of this section.

\* \* \* \* \*

5. Amend “bankruptcy appendix form 4—proof of claim” in Appendix A to Part 190 by revising paragraph a in section III to read as follows:

**Appendix A to Part 190—Bankruptcy Forms**

\* \* \* \* \*

Bankruptcy Appendix Form 4—Proof of Claim

\* \* \* \* \*

III. \* \* \*

a. Whether the account is a futures, foreign futures, leverage, option (if an option

account, specify whether exchange-traded or dealer), “delivery” account, or, only with respect to a bankruptcy of a commodity broker that is a futures commission merchant, a cleared OTC derivatives account. A “delivery” account is one which contains only documents of title, commodities, cash, or other property identified to the claimant and deposited for the purposes of making or taking delivery on a commodity underlying a commodity contract or for payment of the strike price upon exercise of an option.

\* \* \* \* \*

Issued in Washington, DC, on July 31, 2009, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9-18853 Filed 8-12-09; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF THE INTERIOR**

**[SATS No. MT-029-FOR; Docket ID: OSM-2008-0022]**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 926**

**Montana Regulatory Program**

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

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** We are announcing the receipt of revisions pertaining to a previously proposed amendment to the Montana regulatory program (hereinafter, the “Montana program”) under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or “the Act”). Montana proposes additions of rules and revisions to the Administrative Rules of Montana (ARM) concerning Normal Husbandry Practices. Montana intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Montana 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., mountain daylight time September 14, 2009. If requested, we will hold a public hearing on the amendment on September 8, 2009. We will accept requests to speak until 4 p.m., mountain daylight time, on August 28, 2009.

**ADDRESSES:** You may submit comments, identified by “MT-029-FOR” or Docket ID number OSM-2008-0022, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID OSM-2008-0022. If you would like to submit comments via the Federal eRulemaking portal, go to <http://www.regulations.gov> and do the following. Click on the “Advanced Docket Search” button on the right side of the screen. Type in the Docket ID “OSM-2008-0022” and click on the “Submit” button at the bottom of the page. The next screen will display the Docket Search Results for the rule making. If you click on “OSM-2008-0022”, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

- *Mail, Hand Delivery/Courier:* Jeff Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601-1018, (307) 261-6550. Fax: (307) 261-6552.

*Instructions:* All submissions received must include the agency name and MT-029-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 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 the Office of Surface Mining Reclamation and Enforcement’s (OSM’s) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Jeff Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601-1018, Telephone: (307) 261-6550, E-mail: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

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

Or anytime at: <http://www.regulations.gov>, Docket ID OSM-2008-0022.

**FOR FURTHER INFORMATION CONTACT:** Jeff Fleischman (307) 261-6550.

**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 July 3, 2008, Montana sent us a proposed amendment to its program (SATS No. MT-029-FOR) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment to include changes made at its own initiative. The full text of the original program amendment is available for you to read at the locations listed above under **ADDRESSES**.

We announced receipt of the proposed amendment in the November 10, 2008, **Federal Register** (73 FR 66569), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. OSM-2008-0022-0001). Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 10, 2008. We received one comment that was not relevant to the amendment proposal.

During our review of the amendment, we identified concerns with regard to

the proposed revisions for Normal Husbandry Practices that would be used for erosion and settling repair and landscaping activities. We notified Montana of our concerns by letter dated April 16, 2009 (Administrative Record No. OSM-2008-0022-0009). Montana responded in a letter dated May 12, 2009, by submitting a revised amendment proposal (Administrative Record No. OSM-2008-0022-0010). The full text of the revised program amendment is also available for you to read at the locations listed above under **ADDRESSES**.

In response to our concerns, Montana made the following changes to its July 3, 2008, amendment proposal. OSM expressed concerns regarding Guideline Number 7, *Erosion and settling repair*. Guidance concerning the repair of rills and gullies is found in the September 2, 1983, **Federal Register** notice (48 FR 40157). In this FR notice, OSM states that the regulatory authority could allow the repair of rills and gullies as a husbandry practice without restarting the liability period only if the general standards of 30 CFR 816.116(c)(4) are met and after consideration of the normal conservation practices within the region.

To clarify the intent of Guideline Number 7, *Erosion and settling repair*, Montana removed National Resource Conservation Standard (NRCS) No. 578 (stream crossings) from its list of applicable NRCS standards. In our April 16, 2009, letter to Montana, OSM advised the state to justify why stream crossings would be applicable to all crossing types cited in the incorporated NRCS reference, at any time during the liability period without extending the period of responsibility, or define reasonable limits. OSM was particularly concerned about large projects, such as a bridge associated with a road crossing that may be installed near the end of the liability period. We believe that in general, stream crossings should be restricted and clearly stated under what conditions, and what types of stream crossings should be included, or at least which would be prohibited. OSM requested that Montana also include a reasonable time limit to demonstrate the stability of such crossings; and that no negative consequences are reasonably likely after Phase III bond release. The type of stream crossings allowed, under what conditions, and time period restrictions should be supported by appropriate literature references.

Montana omitted stream crossings from the list of standard practices that can be employed for erosion and sediment control. Montana explained that stream crossings was deleted

because it is essentially irrelevant to reclamation activities at Montana coal mines.

OSM also expressed concerns about the use of fertilization and other facilitating practices, *i.e.* irrigation, that were mentioned in the incorporated NRCS reference for Critical Area Planting (342) or elsewhere (*e.g.* 412—Grassed Waterway). Montana must demonstrate that fertilization and other facilitating practices will only be allowed where these practices can be expected to continue as part of the postmining land use; or if the practices discontinue after the liability period expires, the probability of permanent vegetation success will not be reduced.

To clarify the use and intent of fertilizers for erosion and settling repair, Montana added language stating that “the use of fertilization or other facilitating practices (*i.e.* irrigation), as mentioned in some normal husbandry practices (*e.g.* 342—Critical Area Planting and 412—Grassed Waterway) will not be approved unless it can be demonstrated that the practice will continue as part of the postmining land use or if discontinuance of the practice after the liability period expires will not reduce the probability of permanent vegetation success.” OSM is satisfied with Montana’s edits to the July 3 amendment proposal regarding erosion and settling repair.

For Guideline Number 9, *Agricultural activities*, Montana omitted NRCS standard numbers 441 (micro-irrigation system), 442 (sprinkler irrigation system), 443 (surface and subsurface irrigation systems), and 449 (irrigation water management) for consistency, since these practices were omitted from Guideline Number 7 (*Erosion and settling repair*) and Guideline Number 10 (*Landscaping activities*) to satisfy OSM’s concerns.

To clarify the intent of Guideline Number 10 (*Landscaping activities*), Montana removed numbers 422 (hedgerow planting), 441 (micro-irrigation system), 442 (sprinkler irrigation system), 449 (irrigation water management), 578 (stream crossing), 657 (wetland restoration), 658 (wetland creation), and 659 (wetland enhancement) from its list of applicable NRCS standards.

In our April 16, 2009, letter to Montana, OSM expressed concerns regarding the NRCS standard conservation practices for irrigation, specifically micro-irrigation systems (441), sprinkler irrigation systems (442), surface and subsurface irrigation systems (443), and irrigation water management (449). 30 CFR 816.116(c)(4) specifically excludes augmentative

irrigation as being approved as a husbandry practice. However, the preamble to the 1979 revegetation regulations (44 FR 15238, March 13, 1979) clearly states that “the augmented seeding, fertilizing and irrigation does not apply to cropland and pastureland that can be expected to have a similar postmining use and which should be managed in accordance with acceptable local agricultural practices”. OSM explained in the September 7, 1988, **Federal Register** (FR 53 3640) that “the preamble to the 1979 revegetation regulations which explained that fertilization, seeding and irrigation in accordance with local agricultural practices on cropland or pasture land is not considered a prohibited augmentative practice”. Furthermore, 30 CFR 816.116(c)(4) specifically requires that any approved husbandry practice must be expected to continue as part of the postmining land use, or if the practices are discontinued after the liability period expires, cessation will not reduce the probability of permanent vegetation success.

OSM requested that Montana justify why irrigation would be applicable to all land uses without extending the period of responsibility, or define when and on what land use such irrigation practices would be applicable under the constraints cited in the regulations, thereby specifying when such irrigation practices could be reasonably considered to be a normal husbandry practice.

In response, Montana removed the following NRCS standard practices from the list of approved normal husbandry practices for *Landscaping activities*: 422 (hedgerow planting), 441 (micro irrigation system), 442 (sprinkler irrigation system), 449 (irrigation water management), 578 (stream crossing), 657 (wetland restoration), 658 (wetland creation), and 659 (wetland enhancement). Montana explained that a proposal for the use of irrigation systems will be addressed during the permitting or permit revision process and will be required to address OSM's limitations on the use of irrigation.

Regarding wetland related work, OSM expressed concerns that any activity that requires more than minor stabilization, interseeding, or replanting would need to be completed at least six (6) years prior to Phase III bond release. In response to this, Montana omitted numbers 657 (wetland restoration), 658 (wetland creation), and 659 (wetland enhancement) from its list of applicable NRCS standards used for *Landscaping activities*. Montana will address these items through normal reclamation practices and time frames.

### 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.

#### *Electronic or Written Comments*

Send your written comments to OSM at the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see Dates). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

#### *Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., mountain daylight time on August 28, 2009. If you are disabled and need reasonable 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. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

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.

### 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 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. 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: June 12, 2009.

**Allen D. Klein,**

*Regional Director, Western Region.*

[FR Doc. E9–19365 Filed 8–12–09; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG–2009–0348]

RIN 1625–AA09

**Drawbridge Operation Regulations; East River, New York City, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the Roosevelt Island Bridge, mile 6.4, across the East River at New York City, New York. This proposed rule would allow the Roosevelt Island Bridge to remain in the closed position for eleven months to facilitate a major rehabilitation of the bridge.

**DATES:** Comments and related material must be received by the Coast Guard on or before September 14, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2009–0348 using any one of the following methods:

(1) *Federal Rulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as address above, between 9 a.m. and 5 p.m., Monday through Friday, except, Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, telephone 212–668–7165, [joe.arca@uscg.mil](mailto:joe.arca@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**