§ 2200.209 [Amended]

28. Section 2200.209 is amended by:
   a. Removing the word “Chief” in the last sentence of paragraph (f) and adding, in its place, the words “Chief Administrative Law Judge”.
   b. Adding a hyphen between the numeral “21” and the word “day” in the last sentence of paragraph (g).

PART 2203—REGULATIONS IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

29. The authority citation for part 2203 continues to read as follows:
   Authority: 29 U.S.C. 661(g); 5 U.S.C. 552(d)(4); 5 U.S.C. 552b(g).

§ 2203.2 [Amended]

30. Section 2203.2 is amended by removing “, the Deputy General Counsel,” in the definition of “General Counsel.”

§ 2203.3 [Amended]

31. Section 2203.3 is amended by adding the word “that” between the words “person” and “are” in paragraph (b)(4).

PART 2204—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN PROCEEDINGS BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

32. The authority citation for part 2204 continues to read as follows:

§ 2204.102 [Amended]

33. Section 2204.102 is amended by removing “761(i)” in paragraph (d) and adding, in its place, “761(j)”.

§ 2204.105 [Amended]

34. Section 2204.105 is amended by removing “§ 2200.134(d)” in paragraph (c) and adding, in its place, “§ 2200.37(d)”.

§ 2204.108 [Amended]

35. Section 2204.108 is amended by removing “761(i)” in the first sentence and adding, in its place, “761(j)”.

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 944
[SATS No. UT–046–FOR; Docket ID No. OSM–2009–0005]
Utah 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 Utah regulatory program (the “Utah program”) under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or “the Act”). Utah proposed revisions to statutes pertaining to remining. Utah revised its program to remain consistent with the Federal Program.

DATES: Effective Date: December 7, 2009.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Denver Field Division Chief. Telephone: (303) 293–5015. Internet address: jfulton@osmre.gov.

SUPPLEMENTARY INFORMATION:
I. Background on the Utah Program
II. Submission of the Proposed Amendment
Vol. 74, No. 233 / Monday, December 7, 2009 / Rules and Regulations
These changes directly correspond to revisions made to SMCRA on December 20, 2006. The language retained through these changes is the same as or similar to the corresponding Federal language. For these reasons, we find these changes to be in accordance with SMCRA and approve them.

IV. Summary and Disposition of Comments

Public Comments

We received comments on the amendment (Administrative Record Document ID No. OSM–2009–0005–0001), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(1)(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 Document ID No. OSM–2009–0005–0003).

We received one comment from the Bureau of Land Management (BLM) dated June 4, 2009 (Administrative Record Document ID No. OSM–2009–0005–0004). The BLM reviewed the amendment and found it to be acceptable because the changes would modify the Utah Program to match the current provisions of SMCRA.

Executive Protection Agency (EPA) Concurrence and Comments


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 May 22, we requested comments on Utah’s amendment (Administrative Record Document ID No. OSM–2009–0005–0003). By letter dated June 10, 2009, the Utah State Historic Preservation Officer stated that he had no comment concerning the proposed regulation changes (Administrative Record ID No. OSM–2009–0005–0005).

V. OSM’s Decision

Based on the above findings, we approve Utah’s May 19, 2009 amendment.

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.

Effect of OSM’s Decision

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 regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Utah program, we will recognize only the statutory, 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 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 944

Intergovernmental relations, Surface mining, Underground mining.

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

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

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:

<table>
<thead>
<tr>
<th>Citation</th>
<th>Date of Final Publication</th>
<th>Citation/Description</th>
</tr>
</thead>
</table>

[FR Doc. E9–29108 Filed 12–4–09; 8:45 am]