

None of the revisions Ohio proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment. EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on May 23, 1996.

The Federal regulations at 30 CFR Part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 since each such 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 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.

National Environmental Policy Act

No environmental impact statement is required for this rule since 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 has determined 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 corresponding 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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 corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 19, 1996.

Tim L. Dieringer,
Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

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

2. Section 935.15 is amended by adding paragraph (bbb) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(bbb) The following rules, as submitted to OSM on May 23, 1996 are approved effective September 4, 1996.

OAC 1501:13-4-12(G)(3)(d)—Variance
OAC 1501:13-4-12(G)(4)(f), (i)—Permit Issuance
OAC 1501:13-9-08(A)(1)—Protection of Underground Mining
OAC 1501:13-9-08(B) (Deletion)—Protection of Underground Mining
OAC 1501:13-13-01 (Deletion)—Concurrent Surface and Underground Mining

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BILLING CODE 4310-05-M

30 CFR Part 944

[SPATS No. UT-034]

Utah Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to petitions to initiate rulemaking, and backfilling and grading and highwall retention. The amendment revises the Utah program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672-5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, Federal Register (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 30, 1995, and March 11, 1996, Utah submitted to OSM rules that it had promulgated for its program (administrative record Nos. UT-1079 and UT-1081) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). With three exceptions, these rules were substantively identical to rules that

Utah had previously submitted to OSM and for which the Director made a decision in the May 30, 1995, Federal Register (60 FR 28040, administrative record No. UT-1057). The three exceptions occurred in rules that Utah revised in response to required amendments and in response to disapproval that OSM set forth in the May 30, 1995, notice. In response to the required program amendments at 30 CFR 944.16 (c) and (d) (May 30, 1995, 60 FR 28040, 28043-4, finding Nos. 4 and 5), Utah proposed to revise Utah Admin. R. 645-301-553.110 and Utah Admin. R. 534-301-553.120. In response to the Director not approving proposed Utah Admin. R. 645-301-553.651 (May 30, 1995, 60 FR 28040, 28046-7, finding No. 15), Utah did not promulgate the rule. The rule concerned a proposed applicability date for the backfilling and grading of highwalls.

In addition to the aforementioned revisions, Utah by letter dated December 4, 1995, submitted to OSM a proposed revision to Utah Admin. R. 645-100-500, pertaining to petitions to initiate rulemaking (administrative record No. UT-1080). Utah submitted the proposed revision in response to a November 22, 1995, OSM letter (administrative record No. UT-1078) notifying Utah of a needed revision to Utah's rule.

These revisions constitute a proposed amendment to Utah's program. OSM announced receipt of the proposed amendment in the March 20, 1996, Federal Register (61 FR 11350), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT-1085). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 19, 1996.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Utah on November 30 and December 4, 1995, and March 11, 1996, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Utah Admin. R. 645-100-500, Petitions To Initiate Rulemaking

Utah proposed to revise Utah Admin. R. 645-100-500 to provide that persons other than the Division or Board of Oil, Gas and Mining may petition to initiate rulemaking pursuant to Utah Admin. R. Part 641 and the Utah Administrative

Rulemaking Act at Utah Code Annotated (U.C.A.) "63-46a-1, *et seq.*" instead of "63-46-8."

Utah deleted the reference to the statute at U.C.A. 63-46-8 because it previously repealed it. Newly referenced "U.C.A. 63-46a-1 *et seq.*" includes the statutory provisions at U.C.A. 63-46a-12, which allow interested persons to petition agencies requesting the making, amendment, or repeal of rules.

The Federal counterpart regulation to proposed Utah Admin. R. 645-100-500 is at 30 CFR 700.12. The Federal counterpart statutory provision to U.C.A. 63-46a-12 is at section 201(g)(1) of SMCRA. They both provide for persons to petition OSM requesting the issuance, amendment, or repeal of a rule.

The proposed revision to Utah Admin. R. 645-100-500 is no less effective than the Federal regulations at 30 CFR 700.12 and no less stringent than section 201(g)(1) of SMCRA. Therefore, the Director approves the proposed revision to Utah Admin. R. 645-100-500.

2. Utah Admin. R. 645-301-553.110 and .120, Backfilling and Grading and Highwall Retention

Utah Admin. R. 645-301-553.110.— On May 30, 1995, OSM at 30 CFR 944.16(c) (finding No. 4, 60 FR 28040, 28043) required Utah to revise Utah Admin. R. 645-301-553.110 to correct the cross referenced provisions in the phrase "R645-301-500 through R645-301-540," regarding previously mined areas, continuously mined areas, and areas subject to the approximate original contour provisions, to read "R645-301-553.500 through R645-301-553.540" (emphasis added).

In response to the required amendment, Utah proposed to make the changes in the citations. For the reasons discussed in the May 30, 1995, Federal Register notice, the Director finds that the proposed revisions to Utah Admin. R. 645-301-553.110 are consistent with the Federal regulations at 30 CFR 816.102(k) and 817.102(k). Accordingly, the Director approves the proposed revisions to Utah Admin. R. 645-301-553.110 and removes the required amendment at 30 CFR 944.16(c).

Utah Admin. R. 534-301-553.120.— On May 30, 1995, OSM at 30 CFR 944.16(d) (finding No. 5, 60 FR 28040, 28043) required Utah to revise Utah Admin. R. 645-301-553.120 to correct the cross-referenced provisions in the phrase "R645-301-553.500 through R645-301-540," regarding previously mined areas, continuously mined areas, and areas subject to the approximate

original contour provisions, to read "R645-031-553.500 through R645-301-553.540" (emphasis added). In response to the required amendment, Utah made the revision in the citation.

OSM also at 30 CFR 944.16(d) required Utah to revise Utah Admin. R. 645-301-553.120 to correct the cross-referenced provisions in the phrase "R645-301-553.650 through R645-301-553.653" to read "R645-301-553.650 through R645-301-553.651" (emphasis added), or otherwise make a revision that had the same effect. As discussed in following finding No. 4, Utah did not promulgate Utah Admin. R. 645-301-553.651. Therefore, at Utah Admin. R. 645-301-553.120, Utah proposed to only reference Utah Admin. R. 645-301-553.650.

For the reasons discussed in the May 30, 1995, Federal Register notice, the Director finds that the proposed revisions to Utah Admin. R. 645-301-553.120 are consistent with the Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2). Accordingly, the Director approves the proposed revisions to Utah Admin. R. 645-301-553.120 and removes the required amendment at 30 CFR 944.16(d).

3. Utah Admin. R. 645-301-553.651, Applicability Date

On May 30, 1995, the Director did not approve Utah's proposed rule at Utah Admin. R. 645-301-553.651 (finding No. 15, 60 FR 28040, 28046) because it was less stringent than section 515 of SMCRA, not in accordance with the Secretary's assumptions in approving the provisions of the Utah program that allow for the incomplete elimination of highwalls for areas with remaining highwalls subject to the approximate original contour provisions, and not in accordance with the Director's previous finding in the September 17, 1993, final rule Federal Register notice (58 FR 48600, 48605-6; finding No. 3(C)(3)(b)).

In response to this disapproval, Utah deleted the proposed rule at Utah Admin. R. 645-301-553.651 (i.e., did not promulgate the rule in the State rulemaking process). Utah's deletion of the proposed rule is consistent with the Director's disapproval.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program (administrative record No. UT-1082). None of the Federal agencies responded.

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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 its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT-1082). It did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT-1082). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed amendment as submitted on November 30 and December 4, 1995, and March 11, 1996.

The Director approves, as discussed in: finding No. 1, Utah Admin. R. 645-100-500, concerning petitions to initiate rulemaking; and finding No. 2, Utah Admin. R. 645-301-553.110 and .120, concerning backfilling and grading and highwall retention.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 since each such 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.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since 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)).

4. 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.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined 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 that 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. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. 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.

6. Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 21, 1996.

Peter A. Rutledge,
Acting Regional Director, Western Regional
Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations 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 by adding paragraph (hh) to read as follows:

§ 944.15 Approval of amendments to the State regulatory program.

* * * * *

(hh) Revisions to Utah Admin. R. 645-100-500, concerning petitions to initiate rulemaking, and revisions to Utah Admin. R. 645-301-553.110 and Utah Admin. R. 534-301-553.120, concerning backfilling and grading and highwall retention, as submitted to OSM on November 30 and December 4, 1995, and March 11, 1996, are approved effective September 4, 1996.

§ 944.16 [Amended]

3. Section 944.16 is amended by removing and reserving paragraphs (c) and (d).

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30 CFR Part 946

[VA-108-FOR]

Virginia Regulatory Program

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