I. Background on the Utah Program and Plan

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program; on June 3, 1983, the Secretary approved the Utah plan.

General background information on the Utah program and plan, 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, and June 3, 1983, publications of the Federal Register (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30. Subsequent actions concerning Utah's plan amendments can be found at 30 CFR 944.25.

II. Proposed Amendment

By letter dated May 27, 1997, Utah submitted a proposed amendment to its program and plan (administrative record No. UT–1090) pursuant to SMCRA (30 U.S.C. 1201 et seq.). Utah submitted the proposed amendment in response to required program amendments at 30 CFR 944.16 (e) through (i), in response to a June 5, 1996, letter (administrative record No. UT–1083) that OSM sent to Utah in accordance with 30 CFR 732.17(c), and at its own initiative.

The provisions of the Utah coal mining and reclamation statute that Utah proposed to revise or add were: Utah Code Annotated (UCA) 40–10–3(1), definition of "adjudicative proceeding"; UCA 40–10–11(3) and (5), schedule of applicant's mining law violations and reclamation operation violations resulting from unanticipated events or conditions; location of informal conferences; performance standards for all coal mining and reclamation operations and approximate original contour variances for surface coal mining operations; requirements regarding surface effects of underground coal mining, repair or compensation for damage, replacement of water, suspension of underground mining upon finding of immediate danger to inhabitants at the surface, and applicability to other chapters; contest of violation or amount of civil penalty; and lands and waters eligible for expenditure of AMLR funds. The amendment was intended to revise the Utah program and plan to be consistent with SMCRA and to improve operational efficiency.


FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division; telephone: (303) 844–1424; Internet address: WWW.JFULTONOSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program and Plan

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program; on June 3, 1983, the Secretary approved the Utah plan.
UCA 40–10–18(11) (b) and (c), prevention of additional contributions of suspended solids to streamflow and avoidance of channel deepening or enlargement (section 516(b)(9)(b) of SMCRA).

UCA 40–10–18(12) (a), (a) (i) through (iii), and (b), applicability of UCA 40–10–17 for roads, structures, and facilities, and accommodation in requirements to take into account the distinct differences between surface and underground coal mining methods (section 516(b)(10) of SMCRA).

UCA 40–10–18(13), minimization of adverse impacts to fish, wildlife, and related environmental values (section 516(b)(11) of SMCRA).

UCA 40–10–18(14), prevention of acid mine drainages (section 516(b)(12) of SMCRA).

UCA 40–10–18(15)(a), requirements for underground coal mining operations conducted after October 24, 1992 (section 720(a) of SMCRA).

UCA 40–10–18(15)(b) (i) through (iv), repair or compensation for damage caused by subsidence to occupied residential dwellings, related structures, and noncommercial buildings (section 720(a)(1) of SMCRA).

UCA 40–10–18(15)(d), nothing to be construed in UCA 40–10–18(15) to prohibit or interrupt underground coal mining operations (section 720(a)(2) of SMCRA).

UCA 40–10–18(15)(e), adoption of rules within 1 year to implement UCA 40–10–18(15) (section 720(b) of SMCRA).

UCA 40–10–18.1, suspension of underground coal mining upon finding of immediate danger to inhabitants at the surface (section 516(c) of SMCRA), and

UCA 40–10–18.2, applicability of other chapter provisions (section 516(d) of SMCRA).

Because the proposed revisions to these previously-approved Utah statutes are not substantive in nature, the Director finds that these proposed Utah statutes are no less stringent than SMCRA. The Director approves these proposed statutes.

2. Substantive Revisions to Utah’s Statute That Are Substantively Identical to the Corresponding Provisions of SMCRA

Utah proposed revisions to UCA 40–10–25(6)(b), concerning remined lands eligible for AMLR expenditures, that are substantive in nature and contain language that is substantively identical to requirements in section 404 of SMCRA. Because the proposed Utah statute is substantively identical to the corresponding provision of SMCRA, the Director finds that it is no less stringent than SMCRA. The Director approves the proposed revisions to UCA 40–10–25(6)(b).

3. UCA 40–10–3(1), Definition of “Adjudicative Proceeding”

On July 19, 1995, OSM at 30 CFR 944.16(e) required Utah to revise its definition of “adjudicative proceeding” at UCA 40–10–3(1) to include judicial review of agency actions (finding No. 3, 60 FR 37002, June 30, 1995). In this amendment, Utah proposed to revise the definition of “adjudicative proceeding” at UCA 40–10–3(1) to recodifying existing UCA 40–10–3(1) as UCA 40–10–3(1)(a) and making minor, nonsubstantive, editorial revisions to it; and adding a new UCA 40–10–3(1)(b) so that “adjudicative proceeding”, in part, means “judicial review of a division or board (((Division or Board of Oil, Gas and Mining)) action or proceeding specified in Subsection (a))”. The Director finds that this proposed definition of “adjudicative proceeding” at UCA 40–10–3(1)(b) is consistent with: the definition of the same term at UCA 63–46b–2(1)(a), as clarified at UCA 63–46b–1, of the Utah Administrative Procedures Act (UAPA); the definition of the same term in the rules at Utah Administrative Rule (Utah Admin. R) 641–100–200 implementing UAPA; and UCA 40–10–30(1), which provides for the judicial review of the Division’s and Board’s adjudicative proceedings.

The Director approves the proposed revisions to the definition of “adjudicative proceeding” at UCA 40–10–3 (1), (1)(a) and (b) and removes the required amendment at 30 CFR 944.16(e).

4. UCA 40–10–11(3), Review of Applicant Violations Prior to Permit Issuance

In the July 19, 1995, Federal Register (finding No. 7, 60 FR 37002, 37006), OSM placed two required amendments on the Utah program. At 30 CFR 944.16(f), OSM required Utah to revise UCA 40–10–11(3) to require that (1) the schedule of the applicant’s mining law violations required in connection with a permit application includes violations of SMCRA and the implementing Federal regulations and (2) the pattern of violations determination discussed therein includes violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program.

In response to this required amendment at 30 CFR 944.16(f)(1), Utah proposed to add the phrase “the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations” to the first sentence of UCA 40–10–11(3). As proposed, the sentence requires permit applicants to file a schedule listing any and all notices of violation of “the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations”, this chapter (UCA 40–10), any State or Federal program or law approved under SMCRA, and any law, rule, or regulation of the United States or Utah pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the 3-year period prior to the date of application. The Director finds that the proposed addition of the phrase “the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations” makes the first sentence of UCA 40–10–11(3) no less stringent than the corresponding requirement of section 510(c) of SMCRA and satisfies the required amendment at 30 CFR 944.16(f)(1). Therefore, the Director approves this revision to UCA 40–10–11(3) and removes the required amendment at 30 CFR 944.16(f)(1).

Utah also proposed in the third sentence of UCA 40–10–11(3) to (1) make a substantive revision by adding the phrase “and regulation” and (2) make a clarifying nonsubstantive revision by referring to “this Subsection (3)” instead of “this Subsection”. As proposed, the sentence requires that a permit not be issued if the schedule or other information available to the Division indicates that any surface coal mining operation owned or controlled by the applicant is in violation of this chapter (UCA 40–10) or the laws “and regulations” referred to in “this Subsection (3)” (UCA 40–10–11(3)). The substantive revision is consistent with the first sentence of UCA 40–10–11(3), which not only requires compliance with this chapter and various laws, but also requires compliance with any surface coal mining operation owned or controlled by the applicant is in violation of “this Act” (SMCRA) or such other laws referred to in section 510(c) of SMCRA. The reference to “this Act” in section 510(c) of SMCRA includes SMCRA, the implementing Federal regulations at 30 CFR Chapter VII, and all State and Federal programs approved under SMCRA (48 FR 44389, September 28, 1983, and 45 FR 82223, December 15, 1980). With the proposed addition of the phrase “and regulations”, the third
In the July 19, 1995, Federal Register (finding No. 9, 60 FR 37002, 37006), OSM at 30 CFR 944.16(h) required Utah to revise UCA 40–10–13(2)(b) to require that informal conferences shall be conducted in accordance with the procedures described in “this Subsection (b)”, instead of “Subsection (b)”, irrespective of the requirements of section 63–46b–5, the Utah Administrative Procedures Act. In making this revision, Utah clarified that the reference is to UCA 40–10–13(2)(b) itself rather than another subsection of Utah’s statute. The Director finds that Utah’s proposed revisions to UCA 40–10–13(2)(b) are no less stringent than section 513(b) of SMCRA. Therefore, the Director approves the proposed revision to UCA 40–10–13(2)(b) and removes the required amendment at 30 CFR 944.16(h).

7. UCA 40–10–18(15)(c), Water Replacement by Operators of Underground Coal Mines

Utah proposed new UCA 40–10–18(15)(c) as follows:

(c) Subject to the provisions of Section 40–10–29, the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.” (emphasis added). This proposed provision is the same as the counterpart provision at section 720(a)(2) of SMCRA, except that the SMCRA provision protects “any drinking, domestic, or residential water supply from a well or spring” instead of “any state-appropriated water”. Utah explained that, under Utah water law, “a person or entity cannot be a ‘legitimate’ water user if he/she/it is using water that not has been appropriated by the State”. Utah then went on to explain that “[t]he deliberately broad phrase ‘any state-appropriated water’ in the universe of legal Utah water users: * * * ” (administrative record No. UT-1094).
OSM interprets sections 720(a)(2) and 717(a) of SMCRA to mean that the water replacement requirements of section 720(a)(2) do not supersede the deference provided by section 717 to State water law on matters of allocation and use. (See March 31, 1995, 60 FR 16722, 16733.) Utah's proposed phrase "any state-appropriated water" incorporates this concept of deferral to State water law provisions concerning allocation and use, as set forth in section 717(a) of SMCRA, while protecting drinking, domestic, or residential water supplies from wells or springs, as required by section 720(a)(2) of SMCRA.

Furthermore, the proposed term "any state-appropriated water" protects more types of water supplies than drinking, domestic, or residential water supplies from wells or springs. For instance, it protects agricultural, commercial, and industrial water supplies that are not used for direct human consumption, human sanitation, or domestic use. In this respect, proposed USA 40–10–18(15)(c) is more stringent than section 720(a)(2) of SMCRA.

For these reasons, the Director finds that the proposed requirements in UCA 40–10–18(15)(c) that "the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations" are no less stringent than the requirements of sections 720(a)(2) and 717(a) of SMCRA.

8. UCA 40–10–20(2)(e)(ii), Contest of Violation or Amount of Civil Penalty

In the September 27, 1994, Federal Register, the Director deferred decision on a proposed revision to UCA 40–10–20(2) (finding No. 5, 59 FR 49185, 49187). Subsequently, in the July 19, 1995, Federal Register (finding No. 13, 60 FR 37002, 37008), OSM placed a required amendment on the revised version of the same section of the Utah program. At 30 CFR 944.16(i), OSM required Utah to revise UCA 40–10–20(2)(e)(ii) to provide for a waiver of the operator's right to contest the amount of the civil penalty when the operator fails to forward the amount of the penalty to the regulatory authority within 30 days of the operator's receipt of the results of the informal conference.

In response to the Director's decision deferral and the required amendment at 30 CFR 944.16(i), Utah proposed to add the phrase "fact of the" and "amount of the civil penalty assessed for" to UCA 40–10–20(2)(e)(ii). The proposed provision requires that if the operator fails to forward the amount of the civil penalty to the Division within 30 days of receipt of the results of the informal conference, the operator waives any opportunity for further review of the "fact of the" violation or to contest the "amount of the civil penalty assessment for the" violation.

The Director finds that the proposed addition of the phrases "fact of the" and "amount of the civil penalty assessed for the" make UCA 40–10–20(2)(e)(ii) no less stringent than the counterpart requirements of section 518(c) of SMCRA.

Utah's proposed revisions to the civil penalty procedures at UCA 40–10–20(2)(e)(ii) address the issues raised in the Director's September 27, 1994, decision deferral and satisfy the required amendment at 30 CFR 944.16(i). Therefore, the Director approves the proposed revisions to UCA 40–10–20(2)(e)(ii) and removes the required amendment at 30 CFR 944.16(i).

IV. Summary and Disposition of Comments

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

1. Public Comments

In response to OSM's invitation for public comments, the Utah Mining Association responded on June 25, 1997, that it supported the proposed amendment and encouraged OSM to approve it (administrative record No. UT–1096). It stated that it was heavily involved in drafting the two pieces of legislation that comprise the amendment. The mining association indicated that it worked closely with water users on the legislation language and had worked with the State Engineer to ensure that the legislation adequately protected water rights.

2. Federal Agency Comments

Pursuant to 30 CFR 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 and plan. The U.S. Fish and Wildlife Service, Utah Field Office, responded on July 7, 1997, that it had received the proposed amendment but had no comments on it (administrative record No. UT–1097).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendments 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 Ct (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–1091). 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–1091). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approved Utah's proposed amendment as submitted on May 27, 1997.

The Director approves, as discussed in:

Finding No. 1, revisions to UCA 40–10–17(2) ((ii)(B), (p) (i) and (ii), (3) (a) and (c), and (4), (4) (a) and (d), performance standards for all coal mining and reclamation operations, and approximate original contour variances for surface coal mining operations; UCA 40–10–18(1), adoption of rules for control of surface effects of underground coal mining operations; UCA 40–10–18(2), requirements for underground coal mining permits; UCA 40–10–18(3) (a), (a) (i) through (iii), and (b), prevention of subsidence effects; UCA 40–10–18(4), sealing of portals, entryways, drifts, shafts, or other openings; UCA 40–10–18(5), filling or sealing of exploratory holes and return of mine waste to mine workings or excavations; UCA 40–10–18(6) (a), (b), and (b) (i) through (iii), surface disposal of mine waste; UCA 40–10–18(7), dams or embankments constructed of coal mine waste; UCA 40–10–18 (8), (8) (a) and (b), revegetation; UCA 40–10–18(9), protection of offsite areas from damage; UCA 40–10–18(10), elimination of fire hazards and public health and safety hazards; UCA 40–10–18 (11), (11)(a), and (11)(a) (i) through (iii), minimization of disturbances of the prevailing hydrologic balance; UCA 40–10–18(11) (b) and (c), prevention of additional contributions of suspended solids to streamflow and avoidance of channel deepening or enlargement; UCA
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 12998

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12998 (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, State AMLR plans, and program and plan amendments since each such program, plan, and amendment 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 submittals are consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met. Under Title IV SMCRA (30 U.S.C. 1231-1243), decisions on proposed State AMLR plans and plan amendments must be based on a determination of whether the submittals meet the requirements of the implementing Federal regulations at 30 CFR parts 884 and 888.

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 AMLR programs 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)).

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 AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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 counterparty 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 counterparty 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, Abandoned mine reclamation programs.


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 in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *
A \textbf{SUPPLEMENTARY INFORMATION:} 

\textbf{Electronic Availability:} 

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\textbf{Background} 

Appendices A and B to 31 CFR chapter V contain the names of blocked persons, specially designated nationals, especially designated terrorists, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC") (62 FR 34934, June 27, 1997). Pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order"), and the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536, 7 additional Colombian individuals and 7 additional Colombian entities are added to the appendices as persons who have been determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order (collectively "Specially Designated Narcotics Traffickers" or "SDNTs"). Any property subject to the jurisdiction of the United States in which an SDNT has an interest is blocked, and U.S. persons are prohibited from engaging in any transaction or in dealing in any property in which an SDNT has an interest.

The names of two individuals previously designated as SDNTs are being removed because they no longer meet the applicable criteria for designation. All real and personal property of these individuals, including all accounts in which they have any interest, are unblocked; and all transactions involving U.S. persons and these individuals are permissible.

In addition, an address now listed for two "Specially Designated Nationals" ("SDNs") of Iraq is being removed from appendices A and B.

Designations of foreign persons blocked pursuant to the Order are...