

Dated: February 28, 2001.

**Ann M. Witt,**

*Acting Associate Commissioner for Policy.*

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 944

[SPATS UT-038-FOR]

#### Utah Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah's amendment proposed to change the State's rules pertaining to: Definitions of "abandoned site," "other treatment facilities," "previously mined area," "qualified laboratory," and "significant recreational, timber, economic, or other values incompatible with coal mining and reclamation operations;" engineering requirements for impoundments and for backfilling and grading; hydrologic requirements for impoundments; requirements for bond release applications; prime farmland acreage; inspection frequency for abandoned sites; and the period in which to pay a penalty when requesting a formal hearing. Utah intended to revise its program to make it consistent with the corresponding Federal regulations and SMCRA.

**EFFECTIVE DATE:** April 24, 2001.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Denver Field Division Chief; telephone: (303) 844-1400, extension 1424; e-mail: jfulton@osmre.gov.

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Utah Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
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#### I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. You can find background information about Utah's program,

including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

#### II. Submission of the Proposed Amendment

By letter dated December 23, 1999, Utah sent to us an amendment (UT-038-FOR, administrative record No. UT-1133) to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The State sent the amendment in response to a June 19, 1997, letter (administrative record No. UT-1093) that we sent to Utah in accordance with 30 CFR 732.17(c). Changes to the Utah Administrative Rule (Utah Admin. R.) that the State proposed to make are summarized below.

##### A. Changes to Definitions at Utah Admin. R. 645-100-200

1. "*Abandoned site:*" Utah proposed to revise its definition of this term by changing the conditions sites must meet to be considered abandoned and allowing the Division of Oil, Gas and Mining (the Division) to decide if it wants to inspect abandoned sites less than 12 times a year. The proposed changes also require the Division to make written findings on specific topics to justify a decision to set an alternative inspection frequency;

2. "*Other treatment facilities:*" The State proposed to change this definition to include neutralization and precipitators. Utah also proposed to include in this definition those facilities used to prevent additional contributions of dissolved solids to streamflow or runoff outside the permit area or to comply with all applicable State and Federal water quality laws and regulations;

3. "*Previously mined area:*" Utah proposed to change its definition of this term to mean land affected by coal mining and reclamation operations prior to August 3, 1977, that has not been reclaimed to the standards of Utah Admin. R. 645 or 30 CFR Chapter VII;

4. "*Qualified laboratory:*" The State proposed to change this definition to include those facilities that can provide other services specified at Utah Admin. R. 645-302-299;

5. "*Significant recreational, timber, economic, or other values incompatible with coal mining operations:*" Utah proposed to change its definition of this term by removing the qualifying statement that damage to these values caused by mining must be beyond an

operator's ability to repair or restore in order for these values' significance to be evaluated;

##### B. Changes to Engineering Requirements for Impoundments

1. At Utah Admin. R. 645-301-514.320 and -514.330, Utah proposed to change its description of inspection requirements for impoundments that meet, and those that do not meet, the Class B or C criteria of the Natural Resources Conservation Service's (NRCS) Technical Release 60 (TR-60) or the size or other criteria of 30 CFR 77.216;

2. At Utah Admin. R. 645-301-531, the State proposed to require permit applications to contain detailed design plans for siltation structures, water impoundments, and coal processing waste banks, dams, or embankments located inside the permit area;

3. At Utah Admin. R. 645-301-533.100 and -533.110, Utah proposed to include references to provisions of TR-60 in its descriptions of safety factors required for different sizes and types of impoundments;

4. At Utah Admin. R. 645-301-533.200 and -533.210, the State proposed to include references to provisions of TR-60 for, and expand its description of, foundation safety factors and stability, investigation, and testing requirements for different sizes and types of impoundments;

5. At Utah Admin. R. 645-301-533.610, Utah proposed to include TR-60 in its rules by reference and to require impoundments meeting the Class B or C criteria of TR-60 or the size or other criteria of 30 CFR 77.216 to comply with this section of its rules. Further, at Utah Admin. R. 645-301-533.610 through -533.714, Utah proposed to change its description of the information to be included in detailed design plans for various types and sizes of impoundments;

##### C. Changes to Engineering Requirements for Backfilling and Grading

At Utah Admin. R. 645-553.700 and -553.800, the State proposed to revise its definitions of "thin overburden" and "thick overburden," respectively, for the purposes of surface coal mining and reclamation activities;

##### D. Changes to Hydrologic Requirements for Impoundments

1. At Utah Admin. R. 645-301-733.100, Utah proposed to require permit applications to contain detailed design plans for water impoundments located inside the permit area;

2. At Utah Admin. R. 645-301-733.210, the State proposed to allow the

Division to develop design standards for impoundments not included in Utah Admin. R. 645-301-533.610 (discussed previously under Part II.B.5 of this final rule), that ensure stability comparable to a minimum static safety factor of 1.3 in lieu of requiring engineering tests to ensure that level of safety;

3. At Utah Admin. R. 645-301-742.200, Utah proposed to require siltation structures to comply with the design criteria for sediment control measures in Utah Admin. R. 645-301-742;

4. At Utah Admin. R. 645-301-742.224, the State proposed to allow construction of temporary impoundments as sedimentation ponds that will contain and control all runoff from a design precipitation event without using spillways if they meet certain conditions;

5. At Utah Admin. R. 645-301-742.225.1, for impoundments that meet the NRCS Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a), Utah proposed to require them to be designed to control the probable maximum precipitation of a 6-hour event, or a greater event if specified by the Division;

6. At Utah Admin. R. 645-301-742.225.2, the State repeated the requirement stated above in Part II.D.5 of this final rule for Utah Admin. R. 645-301-742.225.1;

7. At Utah Admin. R. 645-301-743.100, the State proposed to require impoundments that meet the NRCS Class B or C criteria for dams of TR-60 to comply with this section of Utah's rules and the table in TR-60 entitled, "Minimum Emergency Spillway Hydrologic Criteria;"

8. At Utah Admin. R. 645-301-743.120, Utah proposed to require impoundments that meet the NRCS Class B or C criteria for dams of TR-60 to comply with the freeboard hydrograph criteria in the TR-60 table entitled, "Minimum Emergency Spillway Hydrologic Criteria;"

9. At Utah Admin. R. 645-301-743.131.3 through -743.131.6, the State proposed spillway design precipitation events for temporary and permanent impoundments of different types and sizes that meet the spillway requirements of Utah Admin. R. 645-301-743.130;

#### *E. Adding Requirements for Bond Release Applications at Utah Admin. R. 645-301-880.130:*

The State's proposed rule requires permittees to include in a bond release application a notarized statement certifying that all applicable reclamation activities have been completed as

required by the Utah Code Annotated (UCA) sections 40-10-1 *et seq.*, the regulatory program, and the approved reclamation plan. Also, each application for each phase of bond release must include this certification;

#### *F. Adding Requirements for Prime Farmland Acreage at Utah Admin. R. 645-302-316.500*

Utah's proposed rule does not allow a decrease in the aggregate total acreage of prime farmland after reclamation from the acreage that existed before mining. It requires Division approval of water bodies built during mining and reclamation along with the consent of all affected property owners in the permit area. Also, the proposed rule requires water bodies to be located in parts of the permit area that will not be reclaimed to prime farmland;

#### *G. Adding an Alternative Inspection Frequency for Abandoned Sites at Utah Admin. R. 645-400-132*

Utah proposed to allow the Division to inspect abandoned sites on a frequency that it sets using procedures proposed under the definition of "abandoned site" at Utah Admin. R. 645-100-200. The State's proposed definition changes are described in Part II. A of this final rule; and

#### *H. Changing the Time in Which To Pay a Penalty When Requesting a Formal Hearing at Utah Admin. R. 645-401-810*

The State proposed to extend to 30 days the period in which a permittee, charged with a violation, must pay a reassessed or affirmed civil penalty to the Division when requesting a formal hearing. The 30-day period begins with the date of service of a conference officer's action.

We announced receipt of the proposed amendment in the January 14, 2000, **Federal Register** (65 FR 2364). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (administrative record No. UT-1136). We did not hold a public hearing or meeting because nobody requested one. The public comment period ended on February 14, 2000.

During our review of the amendment, we identified a concern about a substantive typographical error at proposed Utah Admin. R. 645-301-742.225.2. In that rule, the State inadvertently repeated the wording it proposed at Utah Admin. R. 645-301-742.225.1 and proposed to remove existing wording. These rules allow exceptions to the sediment pond location provision at Utah Admin. R.

645-301-742.224. We notified Utah of our concern, and a suggested minor editorial change, by letter dated April 17, 2000 (administrative record No. UT-1142).

Utah responded in a letter dated November 27, 2000, (administrative record No. UT-1147) with a revised amendment. We reopened and extended the comment period for the revised amendment in the January 9, 2001, **Federal Register** (66 FR 1616; administrative record No. UT-1155). The extended comment period closed January 24, 2001. Utah's revision corrected proposed Utah Admin. R. 645-301-742.225.2 and made one minor editorial change at proposed Utah Admin. R. 645-301-742.225. A description of the editorial change appears below in Part III. A. of this final rule and the correction is described in Part III.B.

### **III. Director's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

#### *A. Minor Revisions to Utah's Rules*

Utah proposed one minor editorial change in response to our April 17, 2000, concern letter (administrative record No. UT-1142). The State added the word "where" to the end of the clause at Utah Admin. R. 645-301-742.225 that leads into the two exceptions to sediment pond location guidance at Utah Admin. R. 645-301-742.225.1 and -742.225.2. With the proposed change, the clause now reads, "An exception to the sediment pond location guidance in R645-301-752.224 may be allowed where: \* \* \*" (30 CFR 816.49(c)(2) and 817.49(c)(2)). Because this is a minor change, we find that it will not make Utah's rules less effective than the corresponding Federal regulations.

#### *B. Revisions to Utah's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

Utah proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations:

Utah Admin. R. 645-100-200, revised definition of "Abandoned Site" with provisions for an alternate inspection frequency, and partial removal of existing wording, in paragraphs (d), (d)(i), (d)(ii), (e), (e)(1), (e)(1)(i) through (1)(vi), (e)(2), (e)(2)(i) and (ii), (f), (f)(i), and (f)(ii), (30 CFR 840.11(g), (g)(4)(i)

and (ii), 11(h) and (h)(1), 11(h)(1)(i) through (vi), and 11(h)(2), (2)(i), and (2)(ii); item XII.A of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-100-200, revised definition of "Other Treatment Facilities" (30 CFR 701.5; item XI.A.1 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-100-200, revised definition of "Previously Mined Area" and partial removal of existing wording (30 CFR 701.5; item VIII.A of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-100-200, revised definition of "Qualified Laboratory" and removal of the word "or" between clauses (30 CFR 795.3; item X.A.1 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-100-200, revised definition of "Significant Recreational, Timber, Economic, or Other Values Incompatible With Coal Mining and Reclamation Operations" with the existing phrase "beyond an operator's ability to repair or restore," removed (30 CFR 761.5; item VI.A.1 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-514.320, addition of requirements for inspecting impoundments that meet, and those that do not meet, the Class B or C criteria of TR-60 or the size or other criteria of 30 CFR 77.216, and removal of existing provisions in this section and at Utah Admin. R. 645-301-514.330 (30 CFR 816.49(a)(12) and 817.49(a)(12); item XI.A.4 of OSM's 6/19/97 Part 732 letter); Utah Admin. R. 645-301-531, addition of a requirement for detailed design plans for siltation structures, water impoundments, and coal processing waste banks, dams or embankments in each permit application, and removal of the term "sediment ponds" (30 CFR 780.25(a) and 784.16(a); item XI.A.3 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-533.100 and 533.110, addition of static safety factor requirements for impoundments that meet, and those that do not meet, the Class B or C criteria of TR-60 or the size or other criteria of 30 CFR 77.216(a), and removal of existing provisions (30 CFR 816.49(a)(4)(i) and (4)(ii) and 817.49(a)(4)(i) and (4)(ii); item XI.A.4 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-533.200 and 533.210, addition of foundation construction, investigation, and testing requirements for temporary and permanent impoundments, and removal of existing provisions (30 CFR 816.49(a)(6)(i) and 817.49(a)(6)(i); item XI.A.4 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-533.610 through 533.614, addition of permitting requirements for impoundments meeting the Class B or C criteria for dams in TR-60 and that meet or exceed

the criteria of 30 CFR 77.216(a), and removal of existing provisions (30 CFR 780.25(a)(2), and (a)(2)(i) through (a)(2)(iv) and 784.16(a)(2), and (a)(2)(i) through (a)(2)(iv); item XI.A.3 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-533.620, addition of a requirement for permit applications to include a stability analysis for impoundments meeting the Class B or C criteria for dams in TR-60, and removal of existing provisions (30 CFR 780.25(f) and 784.16(f); item XI.A.3 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-533.710 through 533.714, addition of provisions describing detailed design plans for impoundments not included in Utah Admin. R. 645-3-1-533.610, as revised by this amendment, and removal of existing provisions (30 CFR 780.25(a)(3) and (a)(3)(i) through (a)(3)(iv), and 784.16(a)(3) and (a)(3)(i) through (a)(3)(iv); item XI.A.3 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-553.700, addition of provisions defining "thin overburden" and removal of existing provisions (30 CFR 816.105(a); item VI.A.5 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-733.210, addition of design requirements for permanent and temporary impoundments that are not included in Utah Admin. R. 645-3-1-533.610, as revised by this amendment, and removal of existing provisions (30 CFR 780.25(c)(2) and (c)(3) and 784.16(c)(2) and (c)(3); item XI.A.3 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-742.200, addition of permit application requirements for siltation structure designs (30 CFR 780.25(b) and 784.16(b); item XI.A.3 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-742.224, revision of permit application requirements to allow construction of temporary impoundments as sedimentation ponds that will contain and control all runoff from a design precipitation event without using spillways if they meet certain conditions (30 CFR 780.25(b) and 784.16(b));

Utah Admin. R. 645-301-742.225.1, addition of an exception to the sediment pond location guidance at Utah Admin. R. 645-301-742.224 for impoundments meeting the Class B or C criteria in TR-60 or the size or other criteria of 30 CFR 77.216(a), and removal of existing provisions (30 CFR 816.49(c)(2)(i) and 817.49(c)(2)(i); item XI.A.4 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-742.225.2, addition of an exception to the sediment pond location guidance at Utah Admin.

R. 645-301-742.224 for impoundments not included in Utah Admin. R. 645-301-742.225.1, and removal of existing provisions (30 CFR 816.49(c)(2)(ii) and 817.49(c)(2)(ii); item XI.A.4 of OSM's 6/19/97 Part 732 letter). This is the correction Utah submitted in the November 27, 2000, revision to its amendment in response to our concern;

Utah Admin. R. 645-301-743.120, addition of a requirement that impoundments meeting the Class B or C criteria of TR-60 comply with the freeboard hydrograph criteria in "Minimum Emergency Spillway Hydrologic Criteria" table of TR-60 (30 CFR 816.49(a)(5) and 817.49(a)(5); item XI.A.4 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-743.131.3 through 743.131.6, addition of design precipitation event criteria for impoundments meeting certain spillway requirements (30 CFR 816.49(a)(9)(ii), and (9)(ii)(A), (B), and (C), and 817.49(a)(9)(ii), and (9)(ii)(A), (B), and (C); item XI.A.4 of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-301-880.130, addition of a requirement for a notarized statement in the bond release application certifying that all applicable reclamation activities have been accomplished (30 CFR 800.40; item V.A of OSM's 6/19/97 Part 732 letter);

Utah Admin. R. 645-302-316.500, addition of new permitting provisions for total prime farmland acreage and construction of water bodies in relation to prime farmlands (30 CFR 785.17(e); item I.A.1 of OSM's 6/19/97 Part 732 letter); and

Utah Admin. R. 645-401-810, revised provision for contesting a proposed penalty or fact of a violation within 30 days from the date of service of the conference officer's action, and removal of the existing provision for doing so within 15 days (30 CFR 723.19 and 845.19; item III.A of OSM's 6/19/97 Part 732 letter).

Because these proposed rules contain wording that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

### *C. Revisions to Utah's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations*

#### 1. Definition of "Thick Overburden" at Utah Admin. R. 645-301-553.800

Utah proposes to change its definition of "thick overburden" by removing language that explains the specific numerical limit on which determining the existence of thick overburden was based. This change is consistent with

the same change we made to the Federal definition in 1991. In place of the numerical limit, Utah proposes to base determinations of thick overburden on whether the thickness of overburden as increased by the swell factor “\* \* \* plus the thickness of other available waste materials \* \* \*” is greater than the combined thickness of the overburden and the coal before removing the coal. There is no counterpart to the phrase “\* \* \* plus the thickness of other available waste materials \* \* \*” in the corresponding part of the Federal definition of “thick overburden” at 30 CFR 816.105(a).

References to “other waste materials” appear in SMCRA and in other parts of the corresponding definition in the Federal regulations. Reference to the thickness of other available waste materials is in the beginning statement in the Federal definition of what “thick overburden” means at CFR 816.105(a). It also follows in that definition’s next statement of where thick overburden occurs. Both parts correspond to identical wording in the same parts of Utah’s proposed definition. Further, section 515(b)(3) of SMCRA provides “[t]hat in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operations is more than sufficient to restore the approximate contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste material \* \* \*” (emphasis added). [“Spoil” is defined at 30 CFR 701.5 as “\* \* \* overburden that has been removed during surface coal mining operations.”]

Utah’s proposed definition also uses two terms that are not in the Federal definition. It uses “topography” where the Federal definition uses “surface configuration” and refers to thickness of the “coal” compared to the coal “bed” in the Federal definition. The first part of the third definition of “topography” in Webster’s Ninth New Collegiate Dictionary is “the configuration of a surface including its relief and the position of its natural and man-made features” (emphasis added). Reference to “\* \* \* the combined thickness of the overburden and the coal prior to removing the coal \* \* \*” in Utah’s definition has the same meaning as the Federal definition’s “\* \* \* the combined thickness of the overburden and coal bed prior to removing the coal \* \* \*” (emphasis added) because both

refer to the thickness of the actual layer, stratum, or deposit of coal that mining removes. This is consistent with the definition of the word “bed” in the Second Edition of the American Geologic Institute’s Dictionary of Mining, Mineral, and Related Terms (meaning “layer” or “stratum”) and use of the term “coal deposit” in the discussion of thin and thick overburden at section 515(b)(3) of SMCRA.

As described above, we find Utah’s proposed definition of thick overburden to be consistent with, and no less stringent than, SMCRA and to be consistent with, and no less effective than, the Federal regulations.

## 2. Requirement at Utah Admin. R. 645–301–743.100 for Certain Impoundments To Comply With the “Minimum Emergency Spillway Hydrologic Criteria” Table in TR–60

Utah’s proposed rule explicitly requires impoundments meeting the Class B or C criteria for dams in TR–60 to comply with the “Minimum Emergency Spillway Hydrologic Criteria” table in TR–60 and the requirements of Utah Admin. R. 645–301–743. That requirement corresponds to identical wording in the counterpart Federal regulations. The State’s proposed rule does not incorporate TR–60 by reference in the State’s hydrology performance standards for impoundments. However, Utah proposes to incorporate TR–60 in its entirety into its rules at Utah Admin. R. 645–301–533.610, which we found in Part III.A.10 of this final rule to have the same meaning as, and therefore is no less effective than, the counterpart Federal regulations. That incorporation of TR–60 by reference ties into the State’s hydrology provisions through a number of other cross-references. Utah’s engineering performance standards at Utah Admin. R. 645–301–560 require coal mining and reclamation operations (which include impoundments by definition) to be conducted in accordance with requirements of Utah Admin. R. 645–301–510 through 301–553. At Utah Admin. R. 645–301–512.240, the State requires professional engineers to use current and prudent engineering practices, to be experienced in impoundment design and construction, and to certify impoundment designs in accordance with Utah Admin. R. 645–301–743. Also, at Utah Admin. R. 645–301–533.600, Utah requires impoundments meeting MSHA’s criteria at 30 CFR 77.216(a) to comply with 30 CFR 77.216 and Utah Admin. R. 645–301–743, among other State rules. Under Utah Admin. R. 645–301–552.200, the State

may approve permanent impoundments if they meet the requirements of Utah Admin. R. 645–301–743 and several other State rules.

In the preamble to our proposed rulemaking at 30 CFR 780.25 and 784.16 (56 FR 29774, 29776; June 28, 1991) we explained that editorial changes and “the addition of specific reference to the SCS criteria for dam classification found in their Technical Release No. 60 (TR–60) \* \* \* are needed to ensure that the permitting requirements for impoundments [i.e., 30 CFR 780 and 784] are consistent with the performance standards for impoundments [i.e., 30 CFR 816 and 817] that are tied both to SCS standards and MSHA requirements.” As proposed in this amendment at Utah Admin. R. 645–301–533, 645–301–733, 645–301–742, and 645–301–743, which include permitting requirements and performance standards, Utah’s rules ensure that its permitting requirements for impoundments are consistent with its performance standards by explicitly invoking the specific criteria for dam classification found in TR–60.

There are other differences between Utah’s proposed rule and the Federal regulations that are minor. One is Utah’s current reference to the Natural Resources Conservation Service, which corresponds to the Federal regulations’ outdated reference to the Soil Conservation Service. The other is the State’s inclusion of Utah addresses where people can get copies of TR–60, which correspond to Virginia and Washington addresses in the Federal regulations.

Unless stated otherwise, Utah’s rules do not address surface and underground mining separately. This proposed Utah Admin. R. 645–301–743 applies to both.

We find proposed Utah Admin. R. 645–301–743 to be no less effective than counterpart 30 CFR 816.49(a)(1) and 817.49(a)(1). Our finding is based on the State’s proposed incorporation of TR–60 in its rules at Utah Admin. R. 645–301–533.610 and the explicit references in Utah Admin. R. 645–301–743, and in other rules being changed in this amendment, to specific criteria of TR–60 that correspond to identical references in the counterpart Federal regulations.

## 3. Alternate Inspection Frequency for Abandoned Sites at Utah Admin. R. 645–400.132

Utah proposes to add to its provision for complete inspection frequency another provision for inspecting abandoned sites on an alternate frequency determined according to the procedures included in the definition of

"abandoned sites" proposed at Utah Admin. R. 645-100-200.

As noted in Part III.B. of this final rule, we find the revised definition of "abandoned sites" that the State proposed at Utah Admin. R. 645-100-200 (as part of this amendment) to have the same meaning as, and therefore to be no less effective than, the Federal definition at 30 CFR 840.11(g). As also noted in Part III.B. of this final rule, we find Utah's alternate inspection frequency provisions for abandoned sites in paragraph (e) of the definition at Utah Admin. R. 645-100-200 (also as proposed in this amendment) to have the same meaning as, and to be no less effective than, the Federal alternate inspection frequency at 30 CFR 840.11(h). The counterpart Federal regulation for complete inspection frequency at 30 CFR 840.11(b) does not include a cross reference to the alternate inspection frequency for abandoned sites; the Federal definition of "abandoned site" already appears in the same section under subsection 840.11(g), and the alternate inspection frequency for abandoned sites is found at 840.11(h). Because Utah defines "abandoned sites" at Utah Admin. R. 645-100-200 along with most of its regulatory terms, and its requirement for complete inspection frequency is at Utah Admin. R. 645-400-132, the cross reference in the State's rule for complete inspection frequency to its definition of abandoned site provides a clear connection between the two.

Moreover, the statement in Utah's proposed rule that "Abandoned sites may be inspected on a frequency as determined under the definition of 'abandoned site' at Utah Admin. R. 645-100-200 \* \* \*" [emphasis added] leaves intact DOGM's requirement for conducting *no less* than one complete inspection of abandoned sites each calendar year while leaving open the option of inspecting them more frequently.

For these reasons, we find that Utah's proposed rule will provide for the same alternate inspection frequency for abandoned sites that the counterpart Federal regulation provides for, and therefore is no less effective than the Federal regulation.

#### *D. Revisions to Utah's Rules With No Corresponding Federal Regulations*

Requirement at Utah Admin. R. 645-301-733.100 That Permit Applications Include a Detailed Design Plan for Each Proposed Water Impoundment

Utah proposes to revise its hydrology provisions for impoundments by adding the requirement that permit applications

include a detailed design plan for each proposed water impoundment in the proposed permit area. Adding this requirement to this rule makes Utah's hydrology provisions for permit applications consistent with its engineering provisions because the State also proposes to add a provision for detailed design plans at Utah Admin. R. 645-301-531 as part of this rulemaking.

There are no direct counterparts to this proposed rule in the Federal regulations, but 30 CFR 780.25(a) and 784.16(a) for surface and underground mining, respectively, are similar. On the other hand, 30 CFR 780.25(a) and 784.16(a) are the direct counterparts to Utah Admin. R. 645-301-531. Utah Admin. R. 645-301-530 *et seq.*, which include Utah Admin. R. 645-301-531, contain the operational design criteria and plans requirements for the engineering component of permit applications, as noted above. The Federal regulations at 30 CFR 780 *et seq.* and 784 *et seq.* include permit application requirements for reclamation and operation plans for surface and underground mining, respectively. Utah does not separate these rules for surface and underground mining; the revised rule applies to both.

Proposed Utah Admin. R. 645-301-531 references "\* \* \* each proposed siltation structure, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area \* \* \*," compared to the reference to "\* \* \* each proposed water impoundment \* \* \*" in Utah Admin. R. 645-301-733.100. Our review of other changes to Utah Admin. R. 645-301-531 and the State's proposal to add the phrase "and detailed design plans" found that rule, with the proposed changes, has the same meaning as counterparts 30 CFR 780.25(a) and 784.16(a). The revision of Utah Admin. R. 645-301-733.100 is consistent with proposed Utah Admin. R. 645-301-531. We find these proposed rules are consistent with, and no less effective than, the counterpart Federal regulations at 30 CFR 780.25(a) and 784.16(a) for surface and underground mining, respectively.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

We asked for public comments on the original amendment in the January 14, 2000, proposed rule **Federal Register** (65 FR 2365; administrative record No. UT-1136), and in letters dated January 6, 2000, that we sent to several organizations (administrative record No. UT-1135). We also asked for public

comments on the revised amendment in the January 9, 2001, **Federal Register** (66 FR 1616; administrative record No. UT-1155) and in letters dated December 13, 2000 (administrative record No. UT-1152), which we sent to the same organizations we previously contacted for comments about the original amendment.

In a letter dated February 2, 2000, the Utah Mining Association (UMA) noted that it participated in preparing and reviewing the proposed rules in the original amendment and supported them in hearings before the Utah Board of Oil, Gas and Mining. UMA suggested no additional changes and urged us to approve the amendment (administrative record no. UT-1140).

The UMA also responded to our December 13, 2000, request for comments on the revised amendment by noting again its participation in Utah's rulemaking process and its support for the proposed rules. UMA encouraged us to complete the approval process (administrative record No. UT-1153).

We did not receive any other public comments on the original or revised amendment.

##### *Federal Agency Comments*

In a letter dated January 6, 2000, we requested comments on the amendment under 30 CFR 732.17(h)(11)(i) from various Federal agencies with an actual or potential interest in the Utah program (administrative record No. UT-1135). We also asked for the same agencies' comments on the revised amendment in letters dated December 13, 2000 (administrative record No. UT-1152).

The U.S. Department of the Interior, Bureau of Land Management (BLM), responded to our January 6, 2000, request in a letter dated January 25, 2000 (administrative record no. UT-1138). BLM said the proposed changes are understandable and appropriate for regulating coal mining in Utah, and did not suggest any changes.

We also received comments on the original amendment from the Utah Field Office of the U.S. Department of the Interior, Fish and Wildlife Service (FWS). In its letter dated January 27, 2000, FWS provided general and specific comments (administrative record no. UT-1139). In general, FWS stated its concern that active coal mining activities and abandoned mines can adversely affect fish, wildlife, and plant species through habitat loss and alteration and other human activities. FWS added that mined land reclamation and restoration should evaluate conditions for fish, wildlife, plants, and other organisms that are important to the proper functioning of ecosystems. In

that context, FWS specifically recommended adding the word "biotic" to part (e)(1)(ii) of the definition of "abandoned site" at Utah Admin. R. 645-100-200. The phrase at that part is one criterion of several that DOGM must affirm in writing when selecting an alternate inspection frequency for abandoned sites. Utah proposed this phrase in its amendment to read "[w]hether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to change into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources \* \* \*." With the FWS recommendation, the phrase would address "land, air, water, or biotic resources."

We agree with FWS in principle and believe Utah's rule considers fish, wildlife, plants, and other organisms as proposed in this amendment. At Utah Admin. R. 645-100-200, the State defines "significant, imminent environmental harm to land, air, or water resources" to mean, in part, an environmental harm that has "an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life \* \* \*." This definition is Utah's counterpart to the Federal definition of the same term at 30 CFR 701.5. Because Utah proposed to define abandoned site with wording that is similar to, or the same as, that used in the counterpart Federal definition, we found the proposed definition to have the same meaning as, and therefore to be no less effective than, the Federal definition. We state that finding in Part III.B. of this final rule. We therefore conclude that Utah does not need to change its proposed rule in response to this comment.

In a telephone message of January 3, 2001, the Natural Resources Conservation Service commented that it concurred with Utah's amendment as revised on November 27, 2000 (administrative record No. UT-1154).

#### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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 this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to agree

on the amendment. However, under 30 CFR 732.17(h)(11)(i), we asked EPA to comment on the original and revised amendment (administrative record No. UT-1135). EPA did not respond.

#### *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 January 6, 2000, we requested comments on the State's original amendment from the Utah SHPO and the ACHP (administrative record No. UT-1135). We asked for their comments on the revised amendment in letters dated December 13, 2000 (administrative record No. UT-1152). In a letter dated January 14, 2000, the SHPO responded that it had no comments about the original amendment (administrative record No. UT-1137). The ACHP did not respond to our requests.

#### **V. Director's Decision**

Based on the above findings, we approve the amendment sent to us by Utah, as revised on November 27, 2000.

We approve the following proposed rules as discussed in: Finding No. III.A: At Utah Admin. R. 645-301-742.225, addition of the word "where" to the end of the clause; in Finding No. III.B: At Utah Admin. R. 645-100-200: Revised definitions of "Abandoned Site;" "Other Treatment Facilities;" "Previously Mined Area;" "Qualified Laboratory;" and "Significant Recreational, Timber, Economic, or Other Values Incompatible With Coal Mining and Reclamation Operations;" at Utah Admin. R. 645-301-514.320, addition of requirements for inspecting impoundments that meet, and those that do not meet, the Class B or C criteria of TR-60 or the size or other criteria of 30 CFR 77.216, and removal of existing provisions in this section and at Utah Admin. R. 645-301-514.330; at Utah Admin. R. 645-301-531, addition of a requirement for detailed design plans for siltation structures, water impoundments, and coal processing waste banks, dams or embankments in each permit application, and removal of the term "sediment ponds;" at Utah Admin. R. 645-301-533.100 and 533.110, addition of static safety factor requirements for impoundments that meet, and those that do not meet, the Class B or C criteria of TR-60 or the size or other criteria of 30 CFR 77.216(a), and removal of existing provisions; at Utah Admin. R. 645-301-533.200 and 533.210, addition of foundation construction, investigation,

and testing requirements for temporary and permanent impoundments, and removal of existing provisions; at Utah Admin. R. 645-301-533.610 through 533.614, addition of permitting requirements for impoundments meeting the Class B or C criteria for dams in TR-60 and that meet or exceed the criteria of 30 CFR 77.216(a), and removal of existing provisions; at Utah Admin. R. 645-301-533.620, addition of requirement for permit applications to include a stability analysis for impoundments meeting the Class B or C criteria for dams in TR-60, and removal of existing provisions; at Utah Admin. R. 645-301-533.710 through 533.714, addition of provisions describing detailed design plans for impoundments not included in Utah Admin. R. 645-301-533.610, and removal of existing provisions; at Utah Admin. R. 645-301-553.700, revised definition of "thin overburden;" at Utah Admin. R. 645-301-733.210, addition of design requirements for permanent and temporary impoundments that are not included in Utah Admin. R. 645-301-533.610, and removal of existing provisions; at Utah Admin. R. 645-301-742.200, addition of permit application requirements for siltation structure designs; at Utah Admin. R. 645-301-742.224, revision of permit application requirements to allow construction of temporary impoundments as sedimentation ponds that will contain and control all runoff from a design precipitation event without using spillways if they meet certain conditions; at Utah Admin. R. 645-301-742.225.1, revised exception to the sediment pond location guidance at Utah Admin. R. 645-301-742.224 for impoundments meeting the Class B or C criteria in TR-60 or the size or other criteria of 30 CFR 77.216(a), and removal of existing provisions; at Utah Admin. R. 645-301-742.225.2, revised exception to the sediment pond location guidance at Utah Admin. R. 645-301-742.224 for impoundments not included in Utah Admin. R. 645-301-742.225.1, and removal of existing provisions; at Utah Admin. R. 645-301-743.120, addition of a requirement that impoundments meeting the Class B or C criteria of TR-60 comply with the freeboard hydrograph criteria in "Minimum Emergency Spillway Hydrologic Criteria" table of TR-60; at Utah Admin. R. 645-301-743.131.3 through 743.131.6, addition of design precipitation event criteria for impoundments meeting certain spillway requirements; at Utah Admin. R. 645-301-880.130, addition of a requirement for a notarized statement in the bond

release application certifying that all applicable reclamation activities have been accomplished; at Utah Admin. R. 645-302-316.500, addition of new permitting provisions for total prime farmland acreage and construction of water bodies in relation to prime farmlands; and at Utah Admin. R. 645-401-810, revised provision for contesting a proposed penalty or fact of a violation within 30 days from the date of service of the conference officer's action; in Finding No. III.C.1, the definition of "Thick Overburden" at Utah Admin. R. 645-100-200; in Finding No. III.C.2, the requirement at Utah Admin. R. 645-301-743.100 for certain impoundments to comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60; in Finding No. III.C.3, the alternate inspection frequency for abandoned sites at Utah Admin. R. 645-400.132; and in Finding D, the requirement at Utah Admin. R. 645-301-733.100 that permit applications include a detailed design plan for each proposed water impoundment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 944, which codify decisions concerning the Utah program. We are making this final rule effective immediately to expedite the Utah program amendment process and to encourage states to make their programs conform to the Federal standards. SMCRA requires consistency of state and Federal standards.

## 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 conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and 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.

### *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.

### *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 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 Utah submittal that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities.

Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by Utah. In making the determination as to whether this rule would have a significant economic impact, the Department relied on 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), 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.

This determination is based on the fact that the Utah submittal that is the subject of this rule is based on 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*

OSM determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on any local, state, or tribal governments or private entities.

### **List of Subjects in 30 CFR Part 944**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 26, 2001.

**Brent Wahlquist,**

*Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR 944 is amended as described 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.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
December 23, 1999 .....	4/24/01	Definitions of "abandoned site," "other treatment facilities," "previously mined area," "qualified laboratory," and "significant recreational, timber, economic, or other values incompatible with coal mining and reclamation operations" at Utah Admin. R. 645-100-200; Utah Admin. R. 645-301-514.320 and -514.330; -301-531; -301-533.100 and -533.110; -301-533.200 and 210; -301-533-610 through 614; -301-533.620; -301-533.700 through 714; -301-553.700; -301-553.800; -301-733.100; -301-733.210; -301-742.200; -301-742.224; -301-742.225, -742.225.1 and -742.225.2; -301-743.100; -301-743.120; -301-743.131.3 through 131.6; -301-880.130; -302-316.500; R. 645-400.132; and R. 645-401-810.

[FR Doc. 01-9968 Filed 4-23-01; 8:45 am]  
BILLING CODE 4310-05-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 01-980, MM Docket No. 01-28, RM-10043]

**Digital Television Broadcast Service; Albuquerque, NM**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of The Board of Regents of the University of New Mexico and the Board of Education of the City of Albuquerque, New Mexico, licensee of noncommercial educational station KNME-TV, substitutes DTV channel \*35 for DTV channel \*25 at Albuquerque, New Mexico. See 66 FR 9061, February 6, 2001. DTV channel \*35 can be allotted to Albuquerque in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (35-12-44 N. and 106-26-57 W.) with a power of 250, HAAT of 1289 meters and with a DTV service population of 762 thousand. With this action, this proceeding is terminated.

**DATES:** Effective June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01-28, adopted April 18, 2001, and released April 23, 2001. The full text of this Commission decision is available for

inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under New Mexico, is amended by removing DTV channel \*25 and adding DTV channel \*35 at Albuquerque.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 01-10156 Filed 4-23-01; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 01-978, MM Docket No. 01-16, RM-10029]

**Digital Television Broadcast Service; Eugene, OR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of KEZI, Inc., licensee of station KEZI-TV, substitutes DTV channel 44 for DTV channel 14 at Eugene, Oregon. See 66 FR 8558, February 1, 2001. DTV channel 44 can be allotted to Eugene in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (44-06-57 N. and 122-59-57 W.) with a power of 548, HAAT of 501.5 meters and with a DTV service population of 441 thousand.

With this action, this proceeding is terminated.

**DATES:** Effective June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01-16, adopted April 18, 2001, and released April 23, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,