

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 944**

[UT-041-FOR]

**Utah Regulatory Program****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposes revisions to and additions of rules pertaining to water replacement, blaster certification, standards for surety companies, and inspection and enforcement. Utah intends to revise its program to be consistent with the corresponding Federal regulations, provide additional safeguards, and improve operational efficiency.

This document gives the times and locations that the Utah program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., mountain daylight time on June 17, 2002. If requested, we will hold a public hearing on the amendment on June 11, 2002. We will accept requests to speak until 4 p.m., mountain daylight time on June 3, 2002.

**ADDRESSES:** You should mail or hand-deliver written comments and requests to speak at the hearing to James F. Fulton, Chief, Denver Field Division, at the address listed below.

You may review copies of the Utah program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Denver Field Division.

Mr. James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999

Broadway, Suite 3320, Denver, Colorado 80202-5733. (303) 844-1400, extension 1424. Internet: [jfulton@osmre.gov](mailto:jfulton@osmre.gov).

Mr. Lowell P. Braxton, Director, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114-5801.

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

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Utah Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the Utah Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah 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. Description of the Proposed Amendment**

By letter dated March 28, 2002, Utah sent us a proposed amendment to its program (UT-041-FOR, Admin. Record No. UT-1160) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah's submittal originally included two separate proposed amendments. In a phone conversation on April 2, 2002 (Admin. Record No. UT-1161), Utah agreed with our proposal to combine the two amendments into one amendment designated UT-041-FOR. Utah sent the amendment at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Utah proposes the following changes to the Utah Administrative Rule (Utah

Admin. R.). The changes are: (1) In its definitions at Utah Admin. R. 645-100-200, Utah proposes to remove the definition of "State-Appropriated Water Supply" and replace it with a new combined definition of the terms "Water Supply," "State-appropriated Water," and "State-appropriated Water Supply," all of which it intends to be synonymous and to mean "state appropriated water rights which are recognized by the Utah Constitution or Utah Code;" (2) at Utah Admin. R. 645-105-314, Utah proposes to add a new blaster certification rule that would require candidates for certification to be twenty-one years of age or older; (3) at Utah Admin. R. 645-301-525.130, Utah proposes to add a new provision requiring a permit applicant to give a copy of the pre-subsidence survey and any technical assessment or engineering evaluation to the water conservancy district, if any, where the mine is located; (4) at Utah Admin. R. 645-301-525.700, the State proposes to add a new requirement that the underground mine operator mail a notification of proposed mining to the water conservancy district, if any, in which the mine is located; (5) at Utah Admin. R. 645-301-728.350, the State proposes to revise its rule to require that determinations of probable hydrologic consequences include findings on whether underground coal mining and reclamation activities conducted after October 24, 1992, may result in contamination, diminution, or interruption of State-appropriated Water in existence within the proposed permit or adjacent areas at the time the application is submitted, and to delete the existing phrase "and used for legitimate purposes within the permit or adjacent areas \* \* \*" at the end of that sentence; (6) at Utah Admin. R. 645-301-860.110 through-860.112, Utah proposes to add new requirements for companies that issue surety bonds to meet to provide the State with standards by which to judge their financial stability; (7) at Utah Admin. R. 645-400-162 and 645-400-381, the State proposes to change its existing references to section 40-10-22 of the Utah Code Annotated (UCA) to reference UCA 40-10-19 so on-site compliance conferences will not be considered inspections in the context of that statutory provision; (8) in the enforcement rule at Utah Admin. R. 645-400-319, Utah proposes to change the existing reference to Utah Admin. R. 645-300-147 to cite Utah Admin. R. 645-300-148 instead, which requires permittees to submit ownership and control information to the Division of

Oil, Gas and Mining; and (9) at Utah Admin. R. 645-400-322, the State proposes to add the phrase “ \* \* \* which does not create an imminent danger or harm for which a \* \* \* ” to complete the sentence and characterize situations in which it will issue notices of violation rather than cessation orders.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Utah program.

#### Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Denver Field Division might not be logged in.

#### Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include “Attn: SPATS No. UT-041-FOR” and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844-1400, extension 1424.

#### Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., mountain daylight time on June 3, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

#### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### IV. Procedural Determinations

#### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

#### Executive Order 12866—Regulatory Planning and Review

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

#### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the

actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

#### Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

#### Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 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 certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based 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. 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 upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 9, 2002.

**Brent Wahlquist,**

*Regional Director, Western Regional Coordinating Center.*

[FR Doc. 02-12459 Filed 5-16-02; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

**[CGD01-02-055]**

**RIN 2115-AA97**

**Safety Zone; 4th of July Parade—Singing Beach—Manchester, MA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for the 4th of July Parade Fireworks on July 3, 2002 in Manchester, MA. The safety zone would temporarily close all waters of Manchester Bay within a 400-yard radius of the fireworks barge. The safety zone will prohibit entry into or movement within this portion of Manchester Bay during this event.

**DATES:** Comments and related material must reach the Coast Guard on or before June 17, 2002.

**ADDRESSES:** You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Dave Sherry, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223-3000.

**SUPPLEMENTARY INFORMATION:****Request for Information**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-02-055), indicate the specific section of this

document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

**Background and Purpose**

This regulation proposes to establish a temporary safety zone in Manchester Bay within a 400-yard radius of the fireworks barge located at position 42°34.054' N, 070°45.52' W. The safety zone will be in effect from 9 p.m. until 10:30 p.m. on July 3, 2002.

The zone would restrict movement within this portion of Manchester Bay and is needed to protect the maritime public from the potential dangers posed by the fireworks display. Marine traffic may transit safely outside of the safety zone during the effective periods. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.