

# Proposed Rules

Federal Register

Vol. 72, No. 203

Monday, October 22, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 944

[SATS No. UT-044-FOR; State Amendment Identification Number UT-1196]

#### 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 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 and statutes about waiving specific application requirements with a written determination by the Division of Oil, Gas and Mining (DOG M), clarification that applications shall be filed with the county clerk "for public inspection," and allowing the area covered by a permit to be extended by an application for a significant permit revision.

Utah intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and to 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., m.s.t., November 21, 2007. If requested, we will hold a public hearing on the amendment on November 16, 2007. We will accept requests to speak until 4 p.m., m.s.t., on November 6, 2007.

**ADDRESSES:** You may submit comments, identified by "UT-044-FOR" by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. OSM is listed as Office of Surface Mining Reclamation and Enforcement. Follow the instructions for submitting comments.
- *Mail:* James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, P.O. Box 46667, Denver, CO 80201-6667.
- *Hand Delivery/Courier:* James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, suite 3320, Denver, CO 80202-5733.

*Instructions:* All submissions received must include the agency name and UT-044-FOR. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* Access to the docket, to 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, may be obtained 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 Office of Surface Mining Reclamation and Enforcement (OSM's) Denver Field Division. In addition, you may review a copy of the amendment during regular business hours at the following locations:

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, suite 3320, Denver, CO 80202-5733, Telephone: (303) 844-1400, extension 1424, E-mail: [jfulton@osmre.gov](mailto:jfulton@osmre.gov).

John R. Baza, Director, Division of Oil, Gas and Mining, 1594 West North Temple, suite 1210, Salt Lake City, UT 84114-5801, Telephone: (801) 538-5340, Internet: <http://www.ogm.utah.gov>.

Or anytime at: <http://www.regulations.gov>. OSM is listed as Office of Surface Mining Reclamation and Enforcement.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, 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 this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 August 31, 2007, Utah sent us a proposed amendment to its program (SATS No. UT-044-FOR, administrative record number UT-1196) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment to propose changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Utah proposes to amend Utah Code Annotated (UCA) § 40-10-10(2)(d)(ii) to clarify the specific permit application requirements which may be waived by the Division with a written determination that the requirements are unnecessary. Without this proposed specification, the provision could be interpreted as allowing the Division to waive a broader range of requirements.

The proposed amendment to UCA § 40-10-10(5) reinstates a provision that was inadvertently deleted in S.B. 72 in 2002. The proposed addition clarifies that permit applications are to be filed

with the county clerk “for public inspection.”

The above proposed revisions to UCA § 40–10–10(2)(d)(ii) and UCA § 40–10–10(5) address topics that were originally addressed in SATS No. UT–042–FOR (administrative record number UT–1171) and included in the February 21, 2003, concern letter (administrative record number UT–1180) from OSM to DOGM.

Proposed changes to UCA § 40–10–12(1)(c) add a provision allowing extensions to area covered by a permit to be made through significant permit revisions. Additional changes recodify the provision and do not change the meaning of the existing statute.

The proposed change to Administrative Rule R645–303–222 implements the proposed changes to UCA § 40–10–12(1)(c) and reflects the procedural requirements referenced for permit revisions rather than the previous reference to new permit application requirements. The above proposed amendment to R645–303–222 was originally proposed in UT–043–FOR (admin record number UT–1181). OSM raised concerns regarding a conflict with the Utah statute (UCA) § 40–10–12(1)(c) in a phone conversation on January 23, 2006, documented as administrative record number UT–1190. Utah formally withdrew the proposed amendment to R645–303–222 on February 16, 2006 (admin record number UT–1194) pending their submittal of a proposed change to UCA § 40–10–12(1)(c).

### 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 us at the addresses given above. Your written 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 record for this rulemaking, but comments delivered to an address other than the those listed above may not be logged in.

#### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on November 6, 2007. 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 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.

The rule does not involve or affect Indian Tribes in any way.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

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

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 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. 4321 *et seq.*).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act.

This rule:

a. Does not have an annual effect on the economy of \$100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

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

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 2007.

**Allen D. Klein,**

*Regional Director, Western Region.*

[FR Doc. E7-20697 Filed 10-19-07; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 110**

[Docket No. CGD07-122]

**RIN 1625-AA01**

**Anchorage Regulation; Port Everglades, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the anchorage regulations for Port Everglades, Florida. The amendment would modify the current anchorage area by eliminating that portion of the anchorage closest to sensitive coral reef areas, expand that portion of the anchorage area that poses less risk to these areas, and limit the amount of time a vessel may remain in

the anchorage area. These changes would ensure all vessels have fair access to the anchorage area, and provide a higher degree of vessel and environmental safety by reducing the possibility of vessels grounding in sensitive coral reef areas.

**DATES:** Comments and related material must reach the Coast Guard on or before November 21, 2007.

**ADDRESSES:** You may mail comments and related material to Coast Guard Sector Miami, Waterways Management Division, 100 MacArthur Causeway, Miami Beach, Florida, 33139. Coast Guard Sector Miami, Waterways Management Division 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 this docket and will be available for inspection or copying at Coast Guard Sector Miami, Waterways Management Division between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Chris Svencer, Coast Guard Sector Miami, Waterways Management Division at (305) 535-4550.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

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 [CGD07-122], 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 they 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 now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector Miami, Waterways Management Division at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.