

# Rules and Regulations

Federal Register

Vol. 73, No. 167

Wednesday, August 27, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 944

[UT-042-FOR; Docket ID OSM-2008-0016]

#### Utah Regulatory Program

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

**ACTION:** Final rule; approval of amendment with certain exceptions.

**SUMMARY:** We are approving, with certain exceptions, a proposed amendment to the Utah regulatory program (the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposed to revise provisions of the Utah Code Annotated pertaining to small operator assistance and permit applications. Utah intended to revise its program to be consistent with SMCRA and to make editorial changes.

**DATES:** *Effective Date:* August 27, 2008.

**FOR FURTHER INFORMATION CONTACT:**

James F. Fulton, Chief, Denver Field Division; Telephone: (303) 844-1400, extension 1424; Internet address: [jfulton@osmre.gov](mailto:jfulton@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Utah Program
- II. Submission of the Proposed Amendment
- III. OSM Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. 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 conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You also can 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 October 22, 2002, Utah sent us an amendment to its program (UT-042-FOR, Administrative Record number UT-1171) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment in response to a June 19, 1997, letter (Administrative Record number UT-1093) that we sent to the State in accordance with 30 CFR 732.17(c).

Utah previously addressed most of the topics included in our June 19, 1997, letter in amendment UT-038-FOR, which we approved in the April 24, 2001 **Federal Register** (66 FR 20600). However, some of the topics described in our letter changed the small operator assistance program (SOAP) by raising the limit on coal production from 100,000 tons to 300,000 tons and describing changes in the type of assistance available to eligible operators under that program. Our letter noted that those changes might require changes in State statutes. In Utah's case, it must change the SOAP provisions in the Utah Code Annotated (UCA, or Utah's Code or statute) before it can change its implementing rules. The amendment that is the subject of this final rule proposed to make the requisite SOAP changes in Utah's Code. At its own initiative, the State proposed additional changes throughout the same section of its Code that involved other topics pertaining to permit applications to clarify wording and recodify certain parts. The clarifications consisted of rewording and restructuring sentences and phrases and changing punctuation.

Specific changes Utah proposed to make to UCA 40-10-10 in this amendment include: Clarifying 40-10-10-1, which describes application fees; designating new 40-10-10(2)(a) and clarifying it and (2)(a)(ii), (iii), (iv) and (vi), which generally describe how permit applications and reclamation plans are to be submitted to the State and describe ownership and right of entry information to be included with permit applications and reclamation plans; clarifying 40-10-10(2)(b), (c), and (d) and recodifying subordinate parts of those subsections, which describe the maps and information about legal right of entry, probable hydrologic consequences and other hydrology information, and characteristics of the coal to be mined that must be included in permit applications; removing existing 40-10-10(3) and replacing it with new 40-10-10(3)(a), (a)(i) through (a)(vi), (b), and (c), all of which pertain to assistance available to eligible small operators to gather and pay for certain baseline and survey data and limitations on that assistance; clarifying and recodifying 40-10-10(4)(a) and (b), which address availability of information pertaining to the coal; clarifying 40-10-10(5), which describes how to file a permit application; clarifying and recodifying 40-10-10(6)(a), (b), (b)(i) and (ii), which describe the proof and type of insurance required to accompany a permit application; and clarifying 40-10-10(7), which requires a blasting plan to be part of a permit application.

We announced receipt of the proposed amendment in the January 6, 2003, **Federal Register** (68 FR 521). 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 number UT-1178). We did not hold a public hearing or meeting because nobody requested one. The public comment period ended on February 5, 2003. We received comments from one Federal agency.

We identified two concerns during our review of the amendment. One involved the proposed change at recodified UCA 40-10-10(2)(d)(ii) that would authorize Utah's Division of Oil, Gas and Mining (DOGM) to waive considerably more application requirements than may be waived under the counterpart Federal provision at

Section 507(b)(15) of SMCRA. We discuss this topic further in part III.B.3 of this final rule. The second concern involved Utah's proposed removal of the phrase "for public inspection" from UCA 40-10-10(5), which requires permit applications to be filed at certain public offices in the counties where mining is to occur. Part III.B.5 of this final rule contains our discussion of this topic. We notified Utah of these concerns by letter dated February 21, 2003 (Administrative Record number UT-1180).

Utah responded in a letter dated August 31, 2007, by sending a new formal amendment to us (Administrative Record number UT-1196). The new amendment included proposed revisions to the Utah Code that addressed the two concerns we raised on our February 21, 2003, letter, and that would make additional changes. We decided to process that new formal amendment to the Utah Code as amendment UT-044-FOR. We made the changes Utah proposed in amendment UT-044-FOR available for public comment and published our final decision on those changes to the Utah Code in the August 12, 2008 **Federal Register** (73 FR 46804). Therefore, no further action is required in this final rule.

### III. OSM's Findings

Following are the findings we made concerning amendment UT-042-FOR under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with certain exceptions as described below.

#### A. Minor Revisions to Utah's Statute

Utah proposed minor editorial changes in wording, punctuation, grammatical, and codification to the following previously-approved statutory provisions. Differences between the following proposed State statutory provisions and the SMCRA provisions (which are listed in parentheses) are minor:

UCA 40-10-10(1), editorial changes to the requirement to include a fee with each application for a surface coal mining and reclamation permit, and the limitation on how much that fee may cost (Section 507(a) of SMCRA);

UCA 40-10-10(4), editorial changes to the requirement to make certain information about coal seams, core and soil samples, and other information available to any person with an interest that may be adversely affected, changes to the description of information that is to be kept confidential, and codifying

new subsections (4)(a) and (b) (Section 507(b)(17) of SMCRA);

UCA 40-10-10(6), editorial changes to the requirement for permit applications to include liability insurance certificates, changes to the description of required insurance, and codifying new subsections 40-10-10(6)(a), (6)(b), and (6)(b)(i) and (ii) (Section 507(f) of SMCRA); and

UCA 40-10-10(7), editorial changes to the requirement for permit applications to include a blasting plan (Section 507(g) of SMCRA).

Because these changes are minor and contain wording that is the same as or similar to the corresponding provisions of SMCRA, we find that they are no less stringent than, and are in accordance with, the corresponding provisions of SMCRA.

#### B. Revisions to Utah's Statute That Are Not the Same as the Corresponding Provisions of SMCRA

##### 1. Property, Ownership, and Related Information Required in Permit Applications (UCA 40-10-10(2)(a))

Utah proposed to make a number of editorial changes at UCA 40-10-10(2) and (2)(a). Most of the editorial changes consist of adding punctuation, word changes, and rephrasing sentences and result in language that is the same as or similar to the corresponding provisions of SMCRA. The State also proposed to codify new subsection (a) to improve the section's paragraph structure.

In addition, Utah's proposed changes at UCA 40-10-10(2)(a)(ii) would replace the term "property" with the term "estate" and rephrase the provision to refer directly to the surface and mineral estates to be mined. Existing UCA 40-10-10(2)(a)(ii) requires permit applications to include information describing " \* \* \* every legal owner of record of the property (surface and mineral) to be mined." In a telephone conversation of December 26, 2002, DOGM explained that use of the term "estate" is more appropriate (than use of the term "property" is) to address situations in which ownership of surface land and subsurface minerals in areas to be mined is not the same (Administrative Record number UT-1177).

We considered comments suggesting a similar change when we proposed defining the term "property to be mined" at 30 CFR 701.5 (48 FR 44344; September 28, 1983). Commenters asserted "that the term 'estate to be mined' would be more correct legally \* \* \*" and would eliminate confusion with the phrase "on and underneath lands" that we proposed as part of the

definition at that time. We decided to retain the term "property to be mined" because it is based on the wording of section 507(b)(1) of SMCRA and is a generally understood and recognized term. At the same time, however, we recognized that section 507(b)(1) requires the permit information to list "the legal owners of record of the property to be mined, including the surface and mineral rights" and that the definition at 30 CFR 701.5 "requires inclusion of the estates within the permit area."

We also recognize, however, that our standard for evaluating Utah's amendment does not require that the State's provisions mirror SMCRA and the Federal regulations. State alternatives to the Federal provisions are acceptable if they are "in accordance with" the requirements of SMCRA and are "consistent with" the Federal regulations, as provided in 30 CFR 732.15(a) (46 FR 53376; October 28, 1981). As defined at 30 CFR 730.5(a), "consistent with" and "in accordance with" mean—

[w]ith regard to the Act [SMCRA], the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act.

As defined by Black's Law Dictionary, "estate" means "the amount, degree, nature, and quality of a person's interest in land or other property." Surface land and subsurface minerals of the same parcel constitute real property but might be the property of different owners as separate, or split, "estates." By distinguishing between the surface and mineral estates, Utah's proposed provision more clearly recognizes that a person's interest in property to be mined might include one or the other estate and not necessarily both. The State's proposed use of the term "estate" in place of "property" is consistent with the practice of split surface land and subsurface mineral ownership often encountered in Utah and elsewhere. In that context, the proposed change makes the provision more specific in terms of requiring information in a permit application that identifies the amount, degree, nature, and quality of a person's interest in the property to be mined.

The Federal counterpart to proposed UCA 40-10-10(2)(a)(ii) is section 507(b)(1)(B) of SMCRA. As noted previously, that provision requires a permit application to contain information identifying—

(B) every legal owner of record of the property (surface and mineral), to be mined;

The counterpart Federal regulations at 30 CFR 778.13 and 13(a) require the permit application to include

information identifying each legal or equitable owner(s) of record of the surface and mineral for “the property to be mined.” As defined at 30 CFR 701.5, the term “property to be mined” means—

[b]oth the surface and mineral estates within the permit area and the area covered by underground workings.

As defined at Utah Administrative Rule R645–100–200, “property to be mined” means—

[b]oth the surface estates and mineral estates within the permit area and the area covered by underground workings.

The phrase “surface and mineral estate” as proposed at UCA 40–10–10(2)(a)(ii) is the basis for the definitions of “property to be mined” in Utah’s Administrative Rule and the Federal regulations. The term “property to be mined” as defined in the Utah Administrative Rules and the Federal regulations has one meaning: “Both the surface and mineral estates within the permit area and the area covered by underground workings \* \* \*.” Conversely, and logically, then, the phrase “both the surface and mineral estates within the permit area and the area covered by underground workings” means “property to be mined.” If “property to be mined” means “both the surface and mineral estates \* \* \*,” then changing the phrase to “surface and mineral estates to be mined” makes the phrase more specific as proposed at UCA 40–10–10(2)(a)(ii) while creating no substantive difference between it and the defined term “property to be mined.” In that context, we consider the proposed term “surface and mineral estate to be mined” to be interchangeable with “property to be mined” in Utah’s Code and synonymous with the term “property (surface and mineral), to be mined” in SMCRA.

Utah’s proposed change from “property (surface and mineral) to be mined” to “surface and mineral estate to be mined” provides more specificity while still requiring the same information for the same areas covered by the counterpart provisions in the Utah Administrative Rule, SMCRA, and the Federal regulations. Moreover, the phrase is consistent with the definition of “property to be mined” in the Utah Administrative Rule and the Federal regulations. As proposed with the changes described above, we find proposed UCA 40–10–10(2)(a)(ii) is in accordance with and therefore no less stringent than SMCRA and can be approved.

2. Permit Application Requirements for Information Describing the Land To Be Affected and the Applicant’s Legal Right To Enter and Begin Surface Mining Operations, and a Determination of Probable Hydrologic Consequences of Mining and Reclamation (UCA 40–10–10(2)(b) and (c))

The State proposes several editorial changes to UCA 40–10–10(2)(b) and (c). At UCA 40–10–10(2)(b), it proposes editorial changes to the description of certain information to be included in permit applications, including maps or plans of land to be affected and a statement of right of entry and to mine, editorial changes to a prohibition on adjudicating property title disputes, and codifying new subsections 40–10–10(2)(b)(i), (2)(b)(i)(A) and (B), and 2(b)(ii) (Section 507(b)(9) of SMCRA). One editorial change includes the addition of the phrase “[a] permit application shall include \* \* \*” as subsection (2)(b)(i) to introduce to the discussion of information requirements that follow in recodified subsections (2)(b)(i)(A) through (B)(ii).

At UCA 40–10–10(2)(c), Utah proposes to make editorial changes to the description of certain other information to be included in permit applications concerning probable hydrologic consequences (PHC) of mining and the quantity and quality of surface and groundwater, to requirements for collecting hydrologic data and submitting PHC determinations, and a restriction against permit approval pending inclusion of this information in an application, and codifying new subsections 40–10–10(2)(c)(i), (2)(c)(i)(A), (B), and (C), and (2)(c)(ii) and (iii) (Section 507(b)(11) of SMCRA). An editorial change to this section includes the addition of the phrase “[a] permit application shall also include \* \* \*” to introduce the discussion of information requirements that follow in recodified subsections 2(c)(i)(A) through (C)(iii).

The editorial changes to UCA 40–10–10(2)(b) and (c) are intended to make Utah’s Code easier to read and understand. Most of those changes are minor and contain wording that is the same as or similar to the corresponding provisions of SMCRA. As a result, we find that they are no less stringent than, and are in accordance with, the corresponding provisions of SMCRA.

Though intended to make the Code easier to read and understand, the proposed introductory phrases at recodified UCA 40–10–10(2)(b)(i) and 2(c)(i) described above may appear to limit the information requirements to permit applications. Existing UCA 40–

10–10(2), which includes existing (2)(b) and (c), describes information that must be included “in the permit application and the reclamation plan submitted as part of a permit application \* \* \*.” The proposed recodified version of UCA 40–10–10(2)(a) retains the reference to the reclamation plan. However, the proposed introductory phrases at UCA 40–10–10(2)(b)(i) and (2)(c)(i) refer to information that must be included in a permit application and do not reference a reclamation plan.

Despite the omission of references to a reclamation plan in the proposed introductory phrases at proposed UCA 40–10–10(2)(b)(i) and (2)(c)(i), we believe the revised wording is not limiting. “Permit” is defined at UCA 40–10–3(11) as—

a permit to conduct surface coal mining and reclamation operations issued by the division.

UCA 40–10–3(18) defines “reclamation plan” as—

A plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to section 40–10–10.

UCA 40–10–10 applies to—

Permit application fee—Submission of application and reclamation plan—Determinations, test, and samplings—Filing of application—Insurance required—Blasting plan.

Further, existing UCA 40–10–10(2) (and proposed recodified UCA 40–10–10(2)(a)) describe information submitted with the “permit application and the reclamation plan submitted as part of a permit application \* \* \*.”

UCA 40–10–11 sets forth requirements the State must follow in approving permit applications. UCA 40–10–11(2)(b) prohibits Utah from approving a permit application unless the—

application affirmatively demonstrates and the division finds in writing on the basis of the information set forth in the application or from information otherwise available \* \* \* that \* \* \* (b) the applicant has demonstrated that the reclamation requirements under this chapter can be accomplished under the reclamation plan contained in the permit application \* \* \*.

Sections 507(b)(9) and (b)(11) of SMCRA are the Federal counterparts to proposed UCA 40–10–10(b)(i) through (ii) and (c)(i) through (iii). Section 507(b) of SMCRA, which includes subsections (b)(9) and (b)(11), describes information that must be submitted in the “permit application” and does not refer to a reclamation plan. The provisions that follow in Section 508 of SMCRA, however, describe information

to be included in reclamation plans that must be—

submitted as part of a permit application \* \* \* in the degree of detail necessary to demonstrate that reclamation required by the State \* \* \* can be accomplished.

Our review of Utah's Code, as summarized above, shows that the proposed introductory phrases will not limit information required in permit applications. A reclamation plan remains a required part of the application for a permit to conduct surface coal mining and reclamation operations in Utah. An applicant for a permit to conduct surface coal mining and reclamation operations still must submit to the State an application demonstrating that the applicant can accomplish the reclamation requirements of Chapter 10 of Title 40 of the Utah Code Annotated. Though UCA 40-10-10 combines in one section the State's counterparts to Sections 507 and 508 of SMCRA and is worded somewhat differently, we interpret proposed UCA 40-10-10(2)(b) and (c) and their subordinate parts to require the same type of information in a permit application as is required in counterpart sections 507 and 508 of SMCRA. We therefore find that the proposed changes at UCA 40-10-10(2)(b) and (c) are not inconsistent with and are no less stringent than the provisions of SMCRA and can be approved.

3. Permit Application Requirements for Information About Test Borings, Core Samplings, and Chemical and Physical Characteristics of the Coal Seam, Overburden, and Strata Underlying the Coal, and Provision for Waiving the Requirement for This Information; UCA 40-10-10(2)(D)(i) and (ii)

Utah proposes to make a number of editorial changes at UCA 40-10-10(2)(d). Existing UCA 40-10-10(2)(d) describes information required in permit applications that describes results of test borings, core samplings, physical and chemical characteristics of the coal seam, overburden, and of the strata under the coal. It also authorizes DOGM to waive the requirement for this information if a written finding concludes it is unnecessary. Utah proposes to codify these provisions as new subsections (2)(d)(i) and (2)(d)(i)(A) through (F) and to codify the waiver provision as new subsection (2)(d)(ii). Most of the editorial changes are minor. However, a change Utah proposed in this amendment to the waiver provision would make it less stringent than SMCRA.

Existing (2)(d) allows DOGM to waive the requirements “\* \* \* of this

Subsection \* \* \*” if it finds, in writing, that they are unnecessary. We interpret the existing waiver's reference to “this Subsection” to mean existing subsection (d), which is limited to the information described above and is consistent with the scope of the waiver in the counterpart Federal provision at Section 507(b)(15) of SMCRA.

As proposed at UCA 40-10-10(2)(d)(ii) in amendment UT-042-FOR, however, Utah would revise its provision by allowing DOGM to waive the application requirements of “\* \* \* this Subsection (2) \* \* \*” upon finding, in writing, that they are unnecessary. By specifically referring to “Subsection (2)” of UCA 40-10-10, the Division may waive much more information than is described under existing subsection (2)(d) or proposed subsections (2)(d)(i) and (2)(d)(i)(A) through (F). Entire subsection (2) describes required application information about ownership, maps and plans, hydrology and probable hydrologic consequences, as well as the test borings, core samplings, and the physical and chemical characteristics of the coal, the overburden, and the stratum underlying the coal. That includes considerably more information than may be waived under Section 507(b)(15) of SMCRA, which says the provisions of “this paragraph (15) may be waived” if the regulatory authority determines, in writing, that they are unnecessary. Referenced “paragraph (15)” of Section 507(b) of SMCRA is limited to descriptions of test borings and core samplings and the physical and chemical characteristics of the coal, the overburden, and the stratum underlying the coal.

For the reason described above, we found proposed subsection 40-10-10(2)(d)(ii) is less stringent than the counterpart Federal provision at Section 507(b)(15) of SMCRA. We notified Utah of our finding in a letter dated February 21, 2003 (Administrative Record number UT-1180). Utah responded in a letter dated August 31, 2007, by sending a new formal amendment to us (Administrative Record number UT-1196). The new amendment included proposed revisions to the Utah Code that addressed the concern we raised on our February 21, 2003, letter and other proposed changes. We decided to process that new formal amendment to the Utah Code as amendment UT-044-FOR and published it in the August 12, 2008 **Federal Register** (73 FR 46804). As a result, no further action is required, on the changes Utah proposed at UCA 40-10-10(2)(d) through (2)(d)(ii) in amendment UT-042-FOR.

4. Eligibility Criteria for Small Operator Assistance Program; Payment for SOAP Services; SOAP Services Provided; Providers of SOAP Services; and Repayment of Services Upon Ineligibility; UCA 40-10-10(3)(a), (b), and (c)

Utah proposed to remove the existing provisions for small operator assistance at UCA 40-10-10(3), replace them with new provisions, and reorganize and codify the entire subsection as UCA 40-10-10(3)(a), (3)(a)(i) through (vi), (3)(b), and (3)(c). These are the statutory changes Utah must make before it may change its rules in response to items X.A.2, 3, and 4 of the June 19, 1997, letter we sent to the State under 30 CFR 732.17.

Proposed UCA 40-10-10(3)(a) is similar to counterpart Section 507(c)(1) and (c)(1)(A) through (F) of SMCRA in all ways but one. It establishes an upper limit on total annual coal production of 300,000 tons from all sources as the basic criterion for operators to meet to be eligible for small operator assistance. It also provides that the Division will pay for the cost of assistance upon an eligible operator's written request. Unlike SMCRA, however, it proposes to make DOGM's payment for assistance contingent on the availability of funds under SMCRA.

In the regulatory program Utah submitted to us in 1980 for review and Secretarial approval, the State conditioned its payment of costs for assistance to small operators “\* \* \* upon receipt of funding from the Office of Surface Mining” (Administrative Record numbers UT-1 and UT-2). We concluded that the contingency made Utah's Code inconsistent with, and less stringent than, SMCRA because it “lessens the requirement that all small operators be provided this service \* \* \*” (45 FR 70481, 70484; October 24, 1980). As a result, we disapproved the proposed contingency in Utah's original program submittal and required the State to amend its Code to remove it as one condition of the Secretary's approval (46 FR 5899, 5900; January 21, 1981). Once Utah removed the proposed contingency, we removed that condition of program approval effective June 22, 1982 (47 FR 26827; 26828).

We implemented the “Procedures and Criteria for Approval or Disapproval of State Programs and Small Operator Assistance” in the January 18, 1983, final rule **Federal Register** (48 FR 2266). In the preamble to that final rule, we explained that “\* \* \* States will have the option of requesting grant assistance for funds appropriated for the SOAP \* \* \*” while noting that “\* \* \* there

are a variety of mechanisms through which the State may provide the required section 507(c) [of SMCRA] analyses and statements \* \* \* without being required to “\* \* \* participate in the SOAP grants program.” We also said “[c]osts for providing SOAP services using alternative mechanisms would be eligible for funding under the State’s \* \* \* grant as outlined in 30 CFR Part 735 \* \* \*.” Further, we noted that, “[u]nder § 795.11, as proposed, a State intending to administer a small operators assistance program under a grant from OSM could submit a grant application for funding of the program under the procedures of 30 CFR Part 735 \* \* \*” (48 FR 2266; 2266 and 2267).

At the same time, we characterized 30 CFR Part 795 as an *elective* means of complying with the requirements of Section 507(c) of SMCRA (*Id.* at 2267, 2268). In the discussion of 30 CFR 795.2, we explained that it—

\* \* \* does not require a separate organization within the structure of the regulatory authority to provide services to a limited number of small operators, but only requires that the mechanism to provide services be in place \* \* \* (*Id.* at 2267).

Finally, in the preamble discussion of 30 CFR 795.9, we said—

\* \* \* new § 795.9(a) will provide that to the extent possible with *available* funds the program administrator shall select and pay a qualified laboratory to make the determination and statement referenced in Section 507(c) of the Act for eligible operators who request assistance. *The regulatory authority through the program administrator shall not be required by OSM to provide funds for the purpose of § 795.9(a) beyond those funds authorized by Section 401(b)(1) of the Act and appropriated by Congress \* \* \** (emphasis added).

The regulation at 30 CFR 795.9(a) referenced above provides for paying the costs of services described at sections 795.9(b)(1) through (6), which are the regulatory counterparts to Sections 507(c)(1)(A) through (F) of SMCRA. These SMCRA provisions, in turn, are the Federal counterparts to sections 40–10–10(3)(a)(i) through (vi) of Utah’s Code as proposed in this amendment.

Proposed UCA 40–10–10(3)(a), (b), and (c) will provide Utah with an updated mechanism to provide assistance to eligible small operators. Under those proposed provisions, payment for services is contingent on the availability of funds under SMCRA consistent with our continuing position that we will not require DOGM “\* \* \* to provide funds for the purpose of § 795.9(a) beyond those funds authorized by Section 401(b)(1) of the

Act and appropriated by Congress \* \* \*.”

Our review found that cross-references in proposed UCA 40–10–10(3)(a)(i), (ii), and (iii) are consistent with the counterpart cross-references in SMCRA.

Proposed UCA 40–10–10(3)(b) would require those activities described at (3)(a)(i) through (iv) to be performed by a qualified laboratory or other entity. It is worded consistent with the counterpart provision at Section 507(c)(1) of SMCRA.

Finally, proposed UCA 40–10–10(3)(c) requires an operator who received assistance under SOAP to reimburse DOGM if the Division finds that the operator’s production exceeded 300,000 tons in the 12-month period immediately following issuance of that operator’s mining permit. It is worded consistent with the counterpart provision at Section 507(h) of SMCRA.

For the reasons described above, we find that proposed UCA 40–10–10(3)(a), (3)(a)(i) through (iv), (3)(b), and (3)(c) are in accordance with and no less stringent than the counterpart provisions of SMCRA.

#### 5. Requirement To File Permit Applications With the County Clerk or Other Public Office; UCA 40–10–10(5)

Existing UCA 40–10–10(5) requires mine permit applications to be filed with the county clerk for public inspection, or at some other public office approved by DOGM, in the county where mining is to occur. The requirement excludes information about the coal seam. Utah proposes to change this section to make minor editorial changes in wording and punctuation. It also proposes to remove the phrase “for public inspection” from the filing requirement.

Removing the phrase “for public inspection” appears to remove the provision’s purpose. Absent the requirement to make an application available for public inspection, there is no other reason stated in this provision for requiring it to be filed with the county clerk or in another public office. The existing approved provision directs the applicant to file a copy of the application specifically so the public can inspect it at a public office in the county where mining is to occur.

We notified Utah of our concern in a letter dated February 21, 2003 (Administrative Record number UT–1180). Utah responded in a letter dated August 31, 2007, by sending a new formal amendment to us (Administrative Record number UT–1196). That amendment included proposed revisions to the Utah Code

that addressed the concern we raised on our February 21, 2003, letter. We decided to process that new formal amendment to the Utah Code as amendment UT–044–FOR and published it in the August 12, 2008 **Federal Register** (73 FR 46804). As a result, no further action is required on the changes Utah proposed at UCA 40–10–10(5) in amendment UT–042–FOR.

## IV. Summary and Disposition of Comments

### Public Comments

We asked for public comments on the amendment (Administrative Record numbers UT–1173 and UT–1178) but did not receive any.

### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and Section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Utah program (Administrative Record number UT–1173).

The Salt Lake City, Utah, office of the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), responded to our request in an e-mail message dated November 29, 2002 (Administrative Record number UT–1175). NRCS said it reviewed the formal amendment and had no comments on it.

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

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence 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 concur on the amendment. However, we requested comments from the EPA under 30 CFR 732.17(h)(11)(i) (Administrative Record number UT–1173). EPA responded in a telephone conversation on December 2, 2002, that it had no comments on the amendment (Administrative Record number UT–1176).

### 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 October 31, 2002, we requested comments on Utah’s

amendment (Administrative Record number UT-1173), but neither responded to our request.

#### V. OSM's Decision

Based on the above findings, we approve, with the following exceptions, Utah's October 22, 2002 amendment:

We defer a decision until we complete our review of amendment UT-044-FOR, as discussed in finding number III.B.3, on proposed changes to UCA 40-10-10(2)(d) through (2)(d)(ii), concerning information requirements for permit applications, including information about test borings, core samplings, and chemical and physical characteristics of the coal seam, overburden, and strata underlying the coal, and a provision for waiving the requirement for that information; and

We also defer a decision until we complete our review of amendment UT-044-FOR, as discussed in finding number III.B.5, on proposed changes to UCA 40-10-10(5), concerning the requirement to file a copy of a permit application for public inspection with the county clerk or an appropriate public office.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 944, which codify decisions concerning the Utah program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### *Effect of OSM's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the Secretary approves the State's program. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulation at 30 CFR 732.17(g) prohibits any changes to approved State programs that are not approved by OSM. In our oversight of the Utah program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Utah to enforce only approved provisions.

#### 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 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, and 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 changes that are the subject of this rule are limited to aspects of the small operator assistance program and mine permit applications applicable to coal mining and reclamation on non-Indian lands within the jurisdiction of the State of Utah. 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. 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 on the fact that the State submittal, which 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*

This rule will not impose an unfunded mandate on State, local, or Indian tribal governments or the private sector of \$100 million or more in any given year. This determination is based on the fact that the State submittal, which 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 did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 17, 2008.

**Allen D. Klein,**  
*Director, Western Region.*

■ For the reasons set out in the preamble, 30 CFR 944 is amended as set forth below:

**PART 944—UTAH**

■ 1. The authority citation for part 944 continues to read as follows:

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

■ 2. Section 944.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

**§ 944.15 Approval of Utah regulatory program amendments**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
*	*	*
October 22, 2002	August 27, 2008	Utah Code Annotated 40–10–10(1), (2)(a)(i) through (vi), (2)(b)(i), (i)(A) and (i)(B), and (ii), (2)(c)(i), (c)(i)(A) through (C), and (2)(c)(iii), (3)(a), (b), and (c), and (4)(a) and (b). Decision deferred on UCA 40–10–10(2)(d) through (2)(d)(ii) and 40–10–10(5).

[FR Doc. E8–19840 Filed 8–26–08; 8:45 am]  
BILLING CODE 4310–05–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG–2008–0832]

RIN 1625–AA08

**Special Local Regulations for Marine Events; Choptank River, Cambridge, MD**

**AGENCY:** Coast Guard, DHS.  
**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard proposes to temporarily change the enforcement period for special local regulations during the “Cambridge Offshore Challenge”, a marine event held annually on the waters of Choptank River near Cambridge, Maryland. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Choptank River during the event.

**DATES:** This rule is effective from 11:30 a.m. September 20, 2008 until 5:30 p.m. September 21, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0832 and are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704 between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, (757) 398–6204. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to minimize potential danger to the public during the event. The necessary information regarding the change of date for this annual recurring marine event was not provided with sufficient time to publish an NPRM. The potential dangers posed by a high speed power boat race conducted on the waterway with other vessel traffic makes special local regulations necessary to provide for the safety of participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.