Issued in Washington, DC on August 5, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E8–18619 Filed 8–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SATS No. UT–044–FOR; Docket ID: OSM–2007–0014]

Utah Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an 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 revisions to its statute and rules regarding permit application requirements which may be waived with a written determination that they are unnecessary by the Division of Oil Gas and Mining (the Division), permit applications being filed in a local public office for public inspection, and extensions to permitted area being processed as significant revisions or applications for new permits. Utah is revising its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency. This amendment package contains changes proposed previously under UT–042–FOR and UT–043–FOR.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: 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.*

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM's) 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 can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15, 944.20, 944.25 and 944.30.

II. Submission of the Proposed Amendment

By letter dated August 31, 2007, Utah sent us an amendment to its program (Administrative Record No. [1] OSM–2007–0014–0004 & OSM–2007–0014–0005) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment in response to concern letters sent by OSM regarding changes proposed under UT–042–FOR (Administrative Record No. UT–1181 dated February 21, 2003) and UT–043–FOR (Administrative Record No. UT–1193 informal concern letter dated February 14, 2006), and to include changes made at its own initiative. Concerns regarding section 40–10–10(2)(d) of the Utah Code Annotated (UCA) and UCA 40–10–10(5) as submitted under UT–042–FOR are addressed here and the remainder of the UT–042–FOR package is being processed through a separate **Federal Register** notice. Utah formally withdrew the amendment to Administrative Rule R645–303–222 proposed under UT–043–FOR in a letter dated February 16, 2006 (Administrative Record No. UT–1194), and we approved the remainder of that amendment package on June 8, 2006 (71 FR 33249; Administrative Record No. UT–1195).

We announced receipt of this proposed amendment in the October 22, 2007, **Federal Register** (72 FR 59489). 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. OSM–2007–0014–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 21, 2007. We received comments from two Federal agencies and one private citizen.

III. OSM's Findings

The following are our findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Utah proposes to amend UCA 40–10–10(2)(d) to read:

40–10–10(2)(d)(i) A permit application will also include the following information:

(A) the result of test borings or core samples from the permit area, including logs of the drill holes;

(B) the thickness of the coal seam found;

(C) an analysis of the chemical properties of the coal;

(D) the sulfur content of any coal seam;

(E) chemical analysis of potentially acid or toxic-forming sections of the overburden; and

(F) chemical analysis of the stratum lying immediately underneath the coal to be mined.

(ii) Application requirements of Subsection (2)(d)(i) may be waived by the division if there is a written determination that these requirements are unnecessary.

Utah proposes to revise its statute at UCA 40–10–10(2)(d) to include recodification and language changes that are intended to increase accessibility and readability, limit the requirements to permit applications rather than permit applications and reclamation plans, and clarify which permit application requirements may be waived with a written determination by the Department that they are unnecessary.

UCA 40–10–10(2)(d) is being recodified as UCA 40–10–10(2)(d)(i)(A) through (F), and (ii). This proposed change will increase accessibility and readability of the section by identifying each requirement set forth in a separate subsection rather than having all requirements stated in one sentence. The recodification and minor language changes necessary to create separate sentences do not change the meaning or effectiveness of this provision.

The proposed language change at UCA 40–10–10(2)(d)(i) will replace the phrase ''A statement of'' with ''A permit application will also include the following''. This change has the effect of limiting the requirements set forth under 40–10–10(2)(d) to only permit

[1] This final rule notice contains references to documents assigned Administrative Record numbers through our old record system and those assigned through the new regulations.gov system. OSM is transitioning to regulations.gov and all administrative record numbers will be assigned through this system in the future.

applications. The remainder of UCA 40–10–10(2) applies to both permit applications and reclamation plans. Reclamation plans must always be submitted as part of permit applications under State and Federal law. Utah's reclamation plan requirements are included in but not limited to UCA 40–10–10 and Administrative Rules R645–301–240, R645–301–340, R645–301–540, and R645–301–550.

The Federal counterpart language at SMCRA section 507(b)(15) contains the same requirements for permit applications only. Specific reclamation plan requirements are set forth under SMCRA section 508 and 30 CFR parts 780 and 784.

Utah Administrative Rule R645–300–133.710 requires the applicant to demonstrate that reclamation as required by the Program can be accomplished according to information given in the permit application. Informational requirements set forth under UCA 40–10–10(2)(d) will be considered in the reclamation plan by inclusion in the permit application.

Both Federal and State laws require the operator to demonstrate to the satisfaction of the regulatory authority that reclamation can be accomplished in the area proposed for mining. With the proposed change, UCA 40–10–10(2)(d) is substantively identical to its Federal counterpart, SMCRA section 507(b)(15). We find this change to be no less stringent than SMCRA.

The addition of the reference to ''(2)(d)(i)'' in subsection (2)(d)(ii) has the effect of limiting the requirements which may be waived by Utah with a written determination that they are unnecessary. With the proposed addition, both State and corresponding Federal provisions at SMCRA section 507(b)(15) call for but allow the regulatory authority to waive the requirements for reports on test borings or core samplings from the permit area including logs of the drill holes; thickness of the coal seam found; an analysis of the chemical properties of the coal; the sulfur content of any coal seam; chemical analysis of potential acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined.

In amendment UT–042–FOR, Utah proposed a provision under which it could waive the information required in paragraph (2) rather than restricting this waiver to (2)(d)(i). This interpretation would allow Utah to waive the required information pertaining to ownership, maps and plans, hydrology and probable hydrologic consequences, as well as the test borings, core samples, and the physical and chemical characteristics of the coal, overburden, and the stratum underlying the coal. This interpretation is inconsistent with Federal requirements under SMCRA and was raised as a concern in a letter from OSM to Utah on February 21, 2003 (Administrative Record No. UT–1180). This addition in UT–044–FOR clarifies the ambiguity and specifically defines which informational requirements may be waived with a written finding by Utah that they are unnecessary. It is also consistent with counterpart section 507(b)(15) of SMCRA.

The final change to this provision replaces the phrase ''with respect to the specific application by'' with ''if there is'' (a written determination * * *). This change is intended to increase the readability of the provision by writing in plain language without altering the provision's meaning. Moreover, we interpret this provision to mean that written determinations to waive application requirements will be made on a case-by-case basis. This interpretation was confirmed with Utah on December 3, 2007 (Administrative record No. OSM–2007–0014–0010). We approve the change with this understanding.

For the reasons discussed above, we find that Utah's proposed revisions to UCA 40–10–10(2)(d) are in accordance with and no less stringent than SMCRA.

B. Utah proposes to amend UCA 40–10–10(5) to read:

40–10–10(5) An applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county, or an appropriate public office approved by the division where the mining is proposed to occur, except for information pertaining to the coal seam itself.

Utah previously proposed changes to its statute at UCA 40–10–10(5) (October 22, 2002 Administrative Record No. UT–1171; processed under SATS No. UT–042–FOR) including deletion of the term ''for public inspection'' from the provision. This raised a concern in that the proposed deletion would remove the provision's purpose of making permit applications available for public inspection near the area where mining is proposed to occur. A concern letter was sent by OSM to Utah February 21, 2003 (Administrative Record No. UT–1180) and we never formally approved the proposed changes.

The current amendment to UCA 40–10–10(5) resubmits the other minor editorial changes to the statute while retaining the phrase ''for public inspection''. The provision's Federal counterpart at SMCRA section 507(e) contains the same language. Additional proposed changes are minor editorial revisions that are intended to improve readability and do not alter the provision's meaning or effectiveness. For these reasons, we find the provision to be no less stringent than SMCRA and we approve Utah's proposed changes.

C. Utah proposes to amend UCA 40–10–12(1)(c) to read:

UCA 40–10–12(1)(e) Any extensions to the area covered by the permit, except incidental boundary revisions, must be made by:

(i) An application for a significant revision of the permit; or

(ii) An application for another permit.

Utah proposes to change the way extensions to area covered by a permit are made from exclusively requiring an application for another permit to either requiring an application for a significant permit revision or an application for another permit. By changing this statute, Utah has addressed our concerns raised in the February 14, 2006 concern letter (Administrative Record No. UT–1193). With this statute change, Utah is now able to amend the implementing Administrative Rule R645–303–222 originally proposed on November 28, 2005 (SATS No UT–043–FOR; Administrative Record No. UT–1181) and formally withdrawn February 16, 2006 (Administrative Record No. UT–1194). This rule change has been resubmitted and is discussed below in Finding III(D).

Section 511 of SMCRA requires that extensions to an area covered under a permit be made through applications for new permits. Significant permit revisions and new permit applications have the same information and public notice requirements. The fundamental difference between significant permit revisions and applications for new permits is the amount of time Utah has to process the application. Significant permit revisions are processed in 120 days as opposed to applications for new permits which are processed in 360 days. Because the information and public notice requirements for significant permit revisions are the same as for new permits, we find this rule change to be no less stringent than SMCRA. We approve this change.

D. Utah proposes to amend Administrative Rule R645–303–222 to read:

R645–303–222. The operator will obtain approval of a permit change by making application in accordance with 645–303–220 for changes in the method of conduct of mining or reclamation operations or in the conditions authorized or required under the approved permit; provided, however, that any extensions to the approved permit area,

except for Incidental Boundary Changes, must be processed and approved using the procedural requirements of R645–303–226.

Proposed Utah Administrative Rule R645–303–222 would allow Utah to process and approve permit area extensions (except incidental boundary changes, or IBCs) using procedures for significant permit revisions at R645–303–226 instead of new permit procedures. The proposed rule implements changes to UCA § 40–10–12(1)(c), which require ''[a]ny extensions to the area covered by the permit, except incidental boundary revisions must be made by: (i) an application for a significant revision of the permit; or (ii) an application for another permit.''

The proposed rule appears, on its face, to be less effective than the counterpart Federal regulation at 30 CFR 774.13(d) which requires extensions to the area covered by the permit, except incidental boundary revisions, to be made by an application for a new permit. However, a review of Utah's referenced rules shows otherwise. SMCRA and the Federal regulations require such permit extensions to be processed as new permit applications. Referenced Utah Administrative Rule R645–303–226 requires Utah to review and process significant permit revisions, and as proposed, permit extensions, in accordance with the requirements of Utah Administrative Rules R645–300–100 and R645–300–200 and the information requirements of R645–301 and R645–302. The requirements of those rules also apply to new permits.

By imposing the requirements of R645–300–100, R645–300–200, R645–301, and R645–302 on significant permit revisions, the proposed rule would subject extensions to the permit area, when processed and reviewed as significant permit revisions, to the same requirements as new permits except for a shorter review period. This is true notwithstanding the obvious difference between the plain wording of the proposed rule and the provisions of SMCRA and the Federal regulations. This proposed change is not inconsistent with the counterpart Federal regulation and is in accordance with SMCRA.

The proposed rule would require Utah to process applications for permit area extensions (except IBC's) within 120 days of receipt of a complete application (same as for significant permit revisions). That would reduce Utah's review and processing time for such permit area extensions by 67 percent compared to the existing 1-year period it has under the current rules to process them as new permit applications. Utah's existing rule at R645–300–131.111.1 requires it to process significant permit revisions within 120 days, and such revisions must meet the same requirements as new permit applications as noted above. The State may choose to impose on itself the same 120-day deadline for permit area extensions. This aspect of the change does not make the proposed rule less effective than or inconsistent with the Federal regulation or less stringent than or not in accordance with SMCRA. For the reasons discussed above, we approve these changes.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on this amendment (Administrative Record No. OSM–2007–0014–0001). Three nonsubstantive comments were received; two from Federal agencies and one from a private citizen.

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 No. OSM–2007–0014–0008).

On September 21, 2007 we received a letter from the Natural Resource Conservation Service dated September 17, 2007 (Administrative Record No. OSM–2007–0014–0002) declining to comment on this amendment.

On October 26, 2007 a representative from EPA Region 8 contacted OSM via telephone and stated that the EPA has no substantive comments on this amendment (Administrative Record No. OSM–2007–0014–0009).

Private Citizen Comment

On October 23, 2007 we received a citizen comment stating that the amendment is ''interesting'' (Administrative Record No. OSM–2007–0014–0003). While we agree, we consider this to be a nonsubstantive comment that does not require further response.

V. OSM's Decision

Based on the above findings, we approve Utah's August 31, 2007 amendment.

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 State program is approved by the Secretary. 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. Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the 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 those 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 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 CFR 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) *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: July 21, 2008.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 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
*	*	*
August 31, 2007	August 12, 2008	Utah Code Annotated 40–10–10(2)(d), (5), 40–10–12(1)(e). Utah Admin R 645–303–222.

[FR Doc. E8–18496 Filed 8–11–08; 8:45 am]

BILLING CODE 4310–05–P