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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 944

[UT-035-FOR]

#### Utah Regulatory Program and Utah Abandoned Mine Land Reclamation Plan

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

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

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Utah regulatory program and Utah abandoned mine land reclamation (AMLR) plan (hereinafter, the "Utah program and plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to and additions of statutes pertaining to the definition for "adjudicative proceeding"; schedule of applicant's mining law violations and remaining operation violations resulting from unanticipated events or conditions; location of informal conferences; performance standards for all coal mining and reclamation operations and approximate original contour variances for surface coal mining operations; requirements regarding surface effects of underground coal mining, repair or compensation for damage, replacement of water, suspension of underground mining upon finding of immediate danger to inhabitants at the surface, and applicability to other chapters; contest of violation or amount of civil penalty; and lands and waters eligible for expenditure of AMLR funds. The amendment was intended to revise the Utah program and plan to be consistent with SMCRA and to improve operational efficiency.

**EFFECTIVE DATE:** August 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Chief, Denver Field Division; telephone: (303) 844-1424; Internet address: WWW.JFULTONOSMRE.GOV.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Utah Program and Plan

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program; on June 3, 1983, the Secretary approved the Utah plan.

General background information on the Utah program and plan, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, and June 3, 1983, publications of the **Federal Register** (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30. Subsequent actions concerning Utah's plan amendments can be found at 30 CFR 944.25.

##### II. Proposed Amendment

By letter dated May 27, 1997, Utah submitted a proposed amendment to its program and plan (administrative record No. UT-1090) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Utah submitted the proposed amendment in response to required program amendments at 30 CFR 944.16 (e) through (i), in response to a June 5, 1996, letter (administrative record No. UT-1083) that OSM sent to Utah in accordance with 30 CFR 732.17(c), and at its own initiative. The provisions of the Utah coal mining and reclamation statute that Utah proposed to revise or add were: Utah Code Annotated (UCA) 40-10-3(1), definition for "adjudicative proceeding"; UCA 40-10-11 (3) and (5), schedule of applicant's mining law violations and remaining operation violations resulting from unanticipated events or conditions; UCA 40-10-13(2), location of informal conferences; UCA 40-10-17 (2), (3), and (4), performance standards for all coal mining and reclamation operations and approximate original contour variances for surface coal mining operations; UCA 40-10-18 (1) through (15), 18.1, and 18.2, requirements regarding surface effects of underground coal mining, repair or compensation for damage, replacement of water, suspension of underground mining upon finding of immediate danger to inhabitants at the surface, and applicability of other chapter provisions; UCA 40-10-20(2) (2)(e), contest of violation or amount of civil penalty; and UCA 40-10-25(6), lands and waters eligible for expenditure of AMLR funds.

OSM announced receipt of the proposed amendment in the June 13, 1997, **Federal Register** (62 FR 32255), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT-1095). Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 14, 1997.

##### III. Director's Findings

As discussed below, the Director, in accordance with SMCRA, 30 CFR 732.15 and 732.17, and 30 CFR 884.14 and 884.15, finds that the proposed program and plan amendment submitted by Utah on May 27, 1997, is no less stringent than SMCRA and consistent with SMCRA. Accordingly, the Director approves the proposed amendment.

##### 1. Nonsubstantive Revisions to Utah's Statutes

Utah proposed revisions to the following previously-approved statutes concerning underground mining that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding SMCRA provisions are listed in parentheses):

UCA 40-10-17 (2) (j)(ii)(B), (p) (ii) and (iii); (3) (a) and (c); and (4), (4) (a) and (d), performance standards for all coal mining and reclamation operations, and approximate original contour variances for surface coal mining operations (sections 515 (b) (10)(B)(ii), (16) (B) and (C); (c) (2) and (6); and (d), (d) (1) and (4) of SMCRA),

UCA 40-10-18(1), adoption of rules for control of surface effects of underground coal mining operations (section 516(a) of SMCRA),

UCA 40-10-18(2), requirements for underground coal mining permits (section 516(b) of SMCRA),

UCA 40-10-18(3) (a), (a) (i) through (iii), and (b), prevention of subsidence effects (section 516(b)(1) of SMCRA),

UCA 40-10-18(4), filling or sealing of portals, entryways, drifts, shafts, or other openings (section 516(b)(2) of SMCRA),

UCA 40-10-18(5), sealing of exploratory holes and return of mine waste to mine workings or excavations (section 516(b)(3) of SMCRA),

UCA 40-10-18(6) (a), (b), and (b) (i) through (iii), surface disposal of mine waste (section 516(b)(4) of SMCRA),

UCA 40-10-18(7), dams or embankments constructed of coal mine waste (section 516(b)(5) of SMCRA),

UCA 40-10-18 (8), (8) (a) and (b), revegetation (section 516(b)(6) of SMCRA),

UCA 40-10-18(9), protection of offsite areas from damage (section 516(b)(7) of SMCRA),

UCA 40-10-18(10), elimination of fire hazards and public health and safety hazards (section 516(b)(8) of SMCRA),

UCA 40-10-18 (11), (11)(a), and (11)(a) (i) through (iii), minimization of disturbances of the prevailing hydrologic balance (section 516(b)(9)(A) of SMCRA),

UCA 40-10-18(11) (b) and (c), prevention of additional contributions of suspended solids to streamflow and avoidance of channel deepening or enlargement (section 516(b)(9)(B) of SMCRA),

UCA 40-10-18(12) (a), (a) (i) through (iii), and (b), applicability of UCA 40-10-17 for roads, structures, and facilities, and accommodation in requirements to take into account the distinct differences between surface and underground coal mining methods (section 516(b)(10) of SMCRA),

UCA 40-10-18(13), minimization of adverse impacts to fish, wildlife, and related environmental values (section 516(b)(11) of SMCRA),

UCA 40-10-18(14), prevention of acid mine drainages (section 516(b)(12) of SMCRA),

UCA 40-10-18(15)(a), requirements for underground coal mining operations conducted after October 24, 1992 (section 720(a) of SMCRA),

UCA 40-10-18(15)(b) (i) through (iv), repair or compensation for damage caused by subsidence to occupied residential dwellings, related structures, and noncommercial buildings (section 720(a)(1) of SMCRA),

UCA 40-10-18(15)(d), nothing to be construed in UCA 40-10-18(15) to prohibit or interrupt underground coal mining operations (section 720(a)(2) of SMCRA),

UCA 40-10-18(15)(e), adoption of rules within 1 year to implement UCA 40-10-18(15) (section 720(b) of SMCRA),

UCA 40-10-18.1, suspension of underground coal mining upon finding of immediate danger to inhabitants at the surface (section 516(c) of SMCRA), and

UCA 40-10-18.2, applicability of other chapter provisions (section 516(d) of SMCRA).

Because the proposed revisions to these previously-approved Utah statutes are nonsubstantive in nature, the Director finds that these proposed Utah statutes are no less stringent than SMCRA. The Director approves these proposed statutes.

## 2. Substantive Revisions to Utah's Statute That Are Substantively Identical to the Corresponding Provisions of SMCRA

Utah proposed revisions to UCA 40-10-25(6)(b), concerning remined lands eligible for AMLR expenditures, that are substantive in nature and contain language that is substantively identical to requirements in section 404 of SMCRA. Because the proposed Utah statute is substantively identical to the corresponding provision of SMCRA, the

Director finds that it is no less stringent than SMCRA. The Director approves the proposed revisions to UCA 40-10-25(6)(b).

## 3. UCA 40-10-3(1), Definition of "Adjudicative Proceeding"

On July 19, 1995, OSM at 30 CFR 944.16(e) required Utah to revise its definition of "adjudicative proceeding" at UCA 40-10-3(1) to include judicial review of agency actions (finding No. 3, 60 FR 37002, 37004-37005).

In this amendment, Utah proposed to revise the definition of "adjudicative proceeding" at UCA 40-10-3(1) to recodifying existing UCA 40-10-3(1) as UCA 40-10-3(1)(a) and making minor, nonsubstantive, editorial revisions to it; and adding a new UCA 40-10-3(1)(b) so that "adjudicative proceeding", in part, means "judicial review of a division or board ((Division or Board of Oil, Gas and Mining)) action or proceeding specified in Subsection (a)".

The Director finds that the proposed definition of "adjudicative proceeding" at UCA 40-10-3(1)(b) is consistent with: the definition of the same term at UCA 63-46b-2(1)(a), as clarified at UCA 63-46b-1, of the Utah Administrative Procedures Act (UAPA); the definition of the same term in the rules at Utah Administrative Rule (Utah Admin. R) 641-100-200 implementing UAPA; and UCA 40-10-30(1), which provides for the judicial review of the Division's and Board's adjudicative proceedings.

The Director approves the proposed revisions to the definition of "adjudicative proceeding" at UCA 40-10-3(1), (1) (a) and (b) and removes the required amendment at 30 CFR 944.16(e).

## 4. UCA 40-10-11(3), Review of Applicant Violations Prior to Permit Issuance

In the July 19, 1995, **Federal Register** (finding No. 7, 60 FR 37002, 37006), OSM placed two required amendments on the Utah program. At 30 CFR 944.16(f), OSM required Utah to revise UCA 40-10-11(3) to require that (1) the schedule of the applicant's mining law violations required in connection with a permit application includes violations of SMCRA and the implementing Federal regulations and (2) the pattern of violations determination discussed therein includes violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program.

In response to the required amendment at 30 CFR 944.16(f)(1), Utah proposed to add the phrase "the Surface Mining Control and Reclamation Act of

1977 or its implementing regulations" to the first sentence of UCA 40-10-11(3). As proposed, the sentence requires permit applicants to file a schedule listing any and all notices of violation of "the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations", this chapter (UCA 40-10), any State or Federal program or law approved under SMCRA, and any law, rule, or regulation of the United States or Utah pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the 3-year period prior to the date of application. The Director finds that the proposed addition of the phrase "the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations" makes the first sentence of UCA 40-10-11(3) no less stringent than the corresponding requirement of section 510(c) of SMCRA and satisfies the required amendment at 30 CFR 944.16(f)(1). Therefore, the Director approves this revision to UCA 40-10-11(3) and removes the required amendment at 30 CFR 944.16(f)(1).

Utah also proposed in the third sentence of UCA 40-10-11(3) to (1) make a substantive revision by adding the phrase "and regulation" and (2) make a clarifying nonsubstantive revision by referring to "this Subsection (3)" instead of "this Subsection". As proposed, the sentence requires that a permit not be issued if the schedule or other information available to the Division indicates that any surface coal mining operation owned or controlled by the applicant is in violation of this chapter (UCA 40-10) or the laws "and regulations" referred to in "this Subsection (3)" (UCA 40-10-11(3)). The substantive revision is consistent with the first sentence of UCA 40-10-11(3), which not only requires compliance with this chapter and various laws, but also various regulations. The corresponding requirement of section 510(c) of SMCRA is that a permit not be issued if the schedule or other information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is in violation of "this Act" (SMCRA) or such other laws referred to in section 510(c) of SMCRA. The reference to "this Act" in section 510(c) of SMCRA includes SMCRA, the implementing Federal regulations at 30 CFR Chapter VII, and all State and Federal programs approved under SMCRA (48 FR 44389, September 28, 1983, and 45 FR 82223, December 15, 1980). With the proposed addition of the phrase "and regulations", the third

sentence of UCA 40-10-11(3) requires compliance with the same laws and regulations as the corresponding requirement of section 510(c) of SMCRA. Therefore, the Director finds that the revised third sentence of UCA 40-10-11(3) is no less stringent than the corresponding requirement of section 510(c) of SMCRA. The Director approves the proposed revisions to UCA 40-10-11(3).

In this amendment, Utah did not, in response to the required amendment at 30 CFR 944.16(f)(2), propose to revise the second half of the third sentence of UCA 40-10-11(3) that still requires that no permit be issued if the applicant or operator controls or has controlled mining operations with a demonstrated pattern of willful violations of "this chapter" (UCA 40-10). As explained in the July 19, 1995, **Federal Register** (finding No. 7, 60 FR 37002, 37006), "this chapter" encompasses only violations of the State statute. It does not, as required by section 510(c) of SMCRA, encompass violations of SMCRA, the implementing Federal regulations, any State and Federal programs enacted under SMCRA, or other provisions of the approved Utah program. Because the second half of the third sentence of UCA 40-10-11(3) is still less stringent than section 510(c) of SMCRA, the Director lets stand the required amendment at 30 CFR 944.16(f)(2).

#### 5. UCA 40-10-11(5)(a), *Remining Operation Violations Resulting From Unanticipated Events or Conditions*

In the July 19, 1995, **Federal Register** (finding No. 8, 60 FR 37002, 37006), OSM at 30 CFR 944.16(g) required Utah to revise UCA 40-10-11(5)(a) to reflect an effective date "after October 24, 1992".

In response to the required amendment, Utah proposed in this amendment at UCA 40-10-11(5)(a) that after October 24, rather than 14, 1992, the prohibition of UCA 40-10-11(3) for issuing permits does not apply to a permit application, if the violation resulted from an unanticipated event or condition that occurred at a surface coal mining operation on lands eligible for remining under a permit held by the person making the application. The Director finds that the proposed date change makes UCA 40-10-11(5)(a) substantively identical to section 510(e) of SMCRA and satisfies the required amendment at 30 CFR 944.16(g). Therefore, the Director approves this proposed revision to UCA 40-10-11(5)(a) and removes the required amendment at 30 CFR 944.16(g).

#### 6. UCA 40-10-13(2)(b), *Location of Informal Conferences*

In the July 19, 1995, **Federal Register** (finding No. 9, 60 FR 37002, 37006-37007), OSM at 30 CFR 944.16(h) required Utah to revise UCA 40-10-13(2)(b) to require that informal conferences for permits and permit revisions "shall", instead of "may", be held in the locality of the coal mining and reclamation operation if requested within a reasonable time after written objections or the request for an informal conference are received by the Division.

In response to the required amendment at 30 CFR 944.16(h), Utah proposed to change "may" to "shall" in UCA 40-10-13(2)(b). Utah, at its own initiative, also proposed a nonsubstantive revision to previously approved language at UCA 40-10-13(2)(b). It proposed that the informal conference shall be conducted in accordance with the procedures described in "this Subsection (b)", instead of "Subsection (b)", irrespective of the requirements of section 63-46b-5, the Utah Administrative Procedures Act. In making this revision, Utah clarified that the reference is to UCA 40-10-13(2)(b) itself rather than another subsection of Utah's statute.

The Director finds that Utah's proposed revisions to UCA 40-10-13(2)(b) are no less stringent than section 513(b) of SMCRA. Therefore, the Director approves the proposed revision to UCA 40-10-13(2)(b) and removes the required amendment at 30 CFR 944.16(h).

#### 7. UCA 40-10-18(15)(c), *Water Replacement by Operators of Underground Coal Mines*

Utah proposed new UCA 40-10-18(15)(c) as follows:

(c) Subject to the provisions of Section 40-10-29, the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

For the reasons discussed below, the Director finds that proposed UCA 40-10-18(15)(c) is no less stringent than sections 720(a)(2) and 717(a) of SMCRA. Therefore, the Director approves the proposed addition of UCA 40-10-18(15)(c).

#### a. The Phrase "Subject to the Provisions of Section 40-10-29"

In UCA 40-10-18(15)(c), Utah proposed water replacement provisions that are "Subject to the provisions of Section 40-10-29". In a January 29,

1997, letter to OSM (administrative record No. UT-1094), Utah clarified that the phrase "Subject to the provisions of Section UCA 40-10-29" was intended as a reference to subsection (1) of UCA 40-10-29.

UCA 40-10-29(1) states that "[n]othing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation." This requirement is substantively identical to section 717(a) of SMCRA.

Utah explained that the phrase "Subject to the provisions of Section 40-10-29" was included in UCA 40-10-18(15)(c) expressly at the request of Utah water users because they wanted to make it clear that the water replacement provisions of UCA 40-10-18 supplement, rather than replace, any common law or other statutory remedies otherwise available to them (administrative record No. UT-1094). Utah also stated that its own interpretation is that the underground mine water replacement requirements of proposed UCA 40-10-18(15)(c) are intended to supplement, not replace, any other remedies that may be available to water users.

On the basis of this rationale, the Director finds that the phrase "Subject to the provisions of Section 40-10-29" in proposed UCA 40-10-18(15)(c) is consistent with the requirements of sections 720(a)(2) and 717(a) of SMCRA.

#### b. Replacement of State-Appropriated Water

In UCA 40-10-18(15)(c), Utah proposed that "the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations" (emphasis added). This proposed provision is the same as the counterpart provision at section 720(a)(2) of SMCRA, except that the SMCRA provision protects "any drinking, domestic, or residential water supply from a well or spring" instead of "any state-appropriated water".

Utah explained that, under Utah water law, "a person or entity cannot be a 'legitimate' water user if he/she/it is using water that not has been appropriated by the State". Utah then went on to explain that "[t]he deliberately broad phrase 'any state-appropriated water' covers the universe of legal Utah water users \* \* \*" (administrative record No. UT-1094).

OSM interprets sections 720(a)(2) and 717(a) of SMCRA to mean that the water replacement requirements of section 720(a)(2) do not supersede the deference provided by section 717 to State water law on matters of allocation and use. (See March 31, 1995, 60 FR 16722, 16733.) Utah's proposed phrase "any state-appropriated water" incorporates this concept of deferral to State water law provisions concerning allocation and use, as set forth in section 717(a) of SMCRA, while protecting drinking, domestic, or residential water supplies from wells or springs, as required by section 720(a)(2) of SMCRA.

Furthermore, the proposed term "any state-appropriated water" protects more types of water supplies than drinking, domestic, or residential water supplies from wells or springs. For instance, it protects agricultural, commercial, and industrial water supplies that are not used for direct human consumption, human sanitation, or domestic use. In this respect, proposed USA 40-10-18(15)(c) is more stringent than section 720(a)(2) of SMCRA.

For these reasons, the Director finds that the proposed requirements in UCA 40-10-18(15)(c) that "the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations" are no less stringent than the requirements of sections 720(a)(2) and 717(a) of SMCRA.

#### 8. UCA 40-10-20(2)(e)(ii), Contest of Violation or Amount of Civil Penalty

In the September 27, 1994, **Federal Register**, the Director deferred decision on a proposed revision to UCA 40-10-20(2) (finding No. 5, 59 FR 49185, 49187). Subsequently, in the July 19, 1995, **Federal Register** (finding No. 13, 60 FR 37002, 37008), OSM placed a required amendment on the revised version of the same section of the Utah program. At 30 CFR 944.16(i), OSM required Utah to revise UCA 40-10-20(2)(e)(ii) to provide for a waiver of the operator's right to contest the amount of the civil penalty when the operator fails to forward the amount of the penalty to the regulatory authority within 30 days of the operator's receipt of the results of the informal conference.

In response to the Director's decision deferral and the required amendment at 30 CFR 944.16(i), Utah proposed to add the phrases "fact of the" and "amount of the civil penalty assessed for the" to UCA 40-10-20(2)(e)(ii). The proposed provision requires that if the operator

fails to forward the amount of the civil penalty to the Division within 30 days of receipt of the results of the informal conference, the operator waives any opportunity for further review of the "fact of the" violation or to contest the "amount of the civil penalty assessment for the" violation.

The Director finds that the proposed addition of the phrases "fact of the" and "amount of the civil penalty assessed for the" make UCA 40-10-20(2)(e)(ii) no less stringent than the counterpart requirements of section 518(c) of SMCRA.

Utah's proposed revisions to the civil penalty procedures at UCA 40-10-20(2)(e)(ii) address the issues raised in the Director's September 27, 1994, decision deferral and satisfy the required amendment at 30 CFR 944.16(i). Therefore, the Director approves the proposed revisions to UCA 40-10-20(2)(e)(ii) and removes the required amendment at 30 CFR 944.16(i).

#### IV. Summary and Disposition of Comments

Following are summaries of all written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

##### 1. Public Comments

In response to OSM's invitation for public comments, the Utah Mining Association responded on June 25, 1997, that it supported the proposed amendment and encouraged OSM to approve it (administrative record No. UT-1096). It stated that it was heavily involved in the drafting the two pieces of legislation that comprise the amendment. The mining association indicated that it had worked closely with water users on the legislation language and had worked with the State Engineer to ensure that the legislation adequately protected water rights.

##### 2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), 884.15(a), and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program and plan.

The U.S. Fish and Wildlife Service, Utah Field Office, responded on July 7, 1997, that it had received the proposed amendment but had no comments on it (administrative record No. UT-1097).

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

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed

amendments that relate to air or water quality standards promulgated 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 its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT-1091). It did not respond to OSM's request.

##### 4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT-1091). Neither SHPO nor ACHP responded to OSM's request.

#### V. Director's Decision

Based on the above findings, the Director approved Utah's proposed amendment as submitted on May 27, 1997.

The Director approves, as discussed in:

Finding No. 1, revisions to UCA 40-10-17 (2) (j)(ii)(B), (p) (ii) and (iii), (3) (a) and (c), and (4), (4) (a) and (d), performance standards for all coal mining and reclamation operations, and approximate original contour variances for surface coal mining operations; UCA 40-10-18(1), adoption of rules for control of surface effects of underground coal mining operations; UCA 40-10-18(2), requirements for underground coal mining permits; UCA 40-10-18(3) (a), (a) (i) through (iii), and (b), prevention of subsidence effects; UCA 40-10-18(4), sealing of portals, entryways, drifts, shafts, or other openings; UCA 40-10-18(5), filling or sealing of exploratory holes and return of mine waste to mine workings or excavations; UCA 40-10-18(6) (a), (b), and (b) (i) through (iii), surface disposal of mine waste; UCA 40-10-18(7), dams or embankments constructed of coal mine waste; UCA 40-10-18 (8), (8) (a) and (b), revegetation; UCA 40-10-18(9), protection of offsite areas from damage; UCA 40-10-18(10), elimination of fire hazards and public health and safety hazards; UCA 40-10-18 (11), (11)(a), and (11)(a) (i) through (iii), minimization of disturbances of the prevailing hydrologic balance; UCA 40-10-18(11) (b) and (c), prevention of additional contributions of suspended solids to streamflow and avoidance of channel deepening or enlargement; UCA

40-10-18(12) (a), (a) (i) through (iii), and (b), applicability of UCA 40-10-17 for roads, structures, and facilities, and accommodation in requirements to take into account the distinct differences between surface and underground coal mining methods; UCA 40-10-18(13), minimization of adverse impacts to fish, wildlife, and related environmental values; UCA 40-10-18(14), prevention of acid mine drainages; UCA 40-10-18(15)(a), requirements for underground coal mining operations conducted after October 24, 1992; UCA 40-10-18(15)(b) (i) through (iv), repair or compensation for damage caused by subsidence to occupied residential dwellings, related structures, and noncommercial buildings; UCA 40-10-18(15)(d), nothing to be construed in UCA 40-10-18(15) to prohibit or interrupt underground coal mining operations; UCA 40-10-18(15)(e), adoption of rules within 1 year to implement UCA 40-10-18(15); UCA 40-10-18.1, suspension of underground coal mining upon finding of immediate danger to inhabitants at the surface; and UCA 40-10-18.2, applicability of other chapter provisions;

Finding No. 2, revisions to UCA 40-10-25(6)(b), remined lands eligible for AMLR expenditures;

Finding No. 3, revisions to UCA 40-10-3 (1), (1) (a) and (b), definition of "adjudicative proceeding";

Finding No. 4, revisions to UCA 40-10-11(3), review of applicant violations prior to permit issuance;

Finding No. 5, revisions to UCA 40-10-11(5)(a), reming operation violations resulting from unanticipated events or conditions;

Finding No. 6, revisions to UCA 40-10-13(2)(b), location of informal conferences;

Finding No. 7, revisions to UCA 40-10-18(15)(c), water replacement by operators of underground coal mines; and

Finding No. 8, revisions to UCA 40-10-20(2)(e)(ii), contest of violation or amount of civil penalty.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program and plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program and plan amendment process and to encourage States to bring their programs and plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Determinations

### 1. Executive Order 12866

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

### 2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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, State AMLR plans, and program and plan amendments since each such program, plan, and amendment 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 submittals are consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met. Under Title IV SMCRA (30 U.S.C. 1231-1243), decisions on proposed State AMLR plans and plan amendments must be based on a determination of whether the submittals meet the requirements of the implementing Federal regulations at 30 CFR parts 884 and 888.

### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since 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)).

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

### 4. 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.*).

### 5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

### 6. Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

### List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining, Abandoned mine reclamation programs.

Dated: July 23, 1997.

**Peter A. Rutledge,**

*Acting Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations 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
May 27, 1997	August 4, 1997	Definition of "adjudicative proceeding" at UCA 40-10-3(1), (a), (b); 40-10-11 (3), (5)(a); 40-10-13(2)(b); 40-10-17 (2) (j) (ii) (B), (p) (ii), (iii), (3) (a), (c), (4), (a), (d); 40-10-18 (1), (2), (3)(a), (i) through (iii), (b), (4), (5), (6) (a), (b), (i) through (iii), (7), (8), (a), (b), (9), (10), (11), (a), (i) through (iii), (b), (c), (12)(a), (i) through (iii), (b), (13), (14), (15)(a), (b) (i) through (iv), (c), (d), (e); 40-10-18.1, .2, 40-10-20(2)(e)(ii).

3. Section 944.16 is amended by removing and reserving paragraphs (e) and (f)(1) and removing paragraphs (g), (h), and (i).

4. Section 944.25 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

**§ 944.25 Approval of Utah abandoned mine land reclamation plan.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
May 27, 1997	August 4, 1997	UCA 40-10-25(6)(b).

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**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**31 CFR Chapter V**

**Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Narcotics Traffickers, and Blocked Vessels: Additional Designations and Removal of Two Individuals**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Amendment of final rule.

**SUMMARY:** The Treasury Department is adding to appendices A and B to 31 CFR chapter V the names of 7 individuals and 7 entities who have been determined to be owned or controlled by, or to act for or on behalf of, other specially designated narcotics traffickers. Two individuals previously designated as specially designated narcotics traffickers are being removed from the appendices. In addition, identifying information is corrected for two specially designated nationals of Iraq.

**EFFECTIVE DATE:** July 30, 1997.

**FOR FURTHER INFORMATION:** Contact the Office of Foreign Assets Control, Department of the Treasury, Washington, DC 22201; tel.: 202/622-2420.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

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**Background**

Appendices A and B to 31 CFR chapter V contain the names of blocked persons, specially designated nationals,

specially designated terrorists, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC") (62 FR 34934, June 27, 1997). Pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order"), and the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536, 7 additional Colombian entities and 7 additional Colombian individuals are added to the appendices as persons who have been determined to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order (collectively "Specially Designated Narcotics Traffickers" or "SDNTs"). Any property subject to the jurisdiction of the United States in which an SDNT has an interest is blocked, and U.S. persons are prohibited from engaging in any transaction or in dealing in any property in which an SDNT has an interest.

The names of two individuals previously designated as SDNTs are being removed because they no longer meet the applicable criteria for designation. All real and personal property of these individuals, including all accounts in which they have any interest, are unblocked; and all transactions involving U.S. persons and these individuals are permissible.

In addition, an address now listed for two "Specially Designated Nationals" ("SDNs") of Iraq is being removed from appendices A and B.

Designations of foreign persons blocked pursuant to the Order are