tribal governments or the private sector cost 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 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 20, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

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

2. Section 943.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
July 25, 2001	November 6, 2002	Sections 12.3(169) definition of ''surface coal mining operations which exist on the date of enactment [removed] and 12.3(187) definition of ''valid existing rights;'' 12.71–.74; 12.77; 12.111(1)(H); 12.112(b)(4); 12.113(a); 12.118(a) and (c); 12.151(a)(2); 12.158(a) and (c); 12.191(a)(2); 12.207(a)(5); and 12.216(4)(A).

[FR Doc. 02–28199 Filed 11–5–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–041–FOR]

Utah Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving 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 revisions to and additions of rules about water replacement, blaster certification, standards for surety companies, and inspection and enforcement. Utah revised its program to be consistent with the corresponding Federal regulations, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, telephone: (303) 844–1400, extension 1242; Internet address: *jfulton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of the Proposed Amendment
III. 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 and 944.30.

II. Submission of the Proposed Amendment

By letter dated March 28, 2002, Utah sent us an amendment to its program (UT–041–FOR, Administrative Record No. UT–1160) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah's original submittal included two separate proposed amendments. In a telephone conversation on April 2, 2002 (Administrative Record No. UT–1161), Utah agreed to our proposal to combine the two amendments into one amendment designated UT–041–FOR. Utah sent the amendment at its own initiative. The provisions of the Utah Administrative Rule (Utah Admin. R.) that Utah proposed to revise and add were: In its definitions at Utah Admin. R. 645–100–200, Utah proposed to remove the definition of ''State-Appropriated Water Supply'' and replace it with a new combined definition of the terms ''Water Supply,'' ''State-appropriated Water,'' and ''State-appropriated Water Supply,'' all of which it intends to be synonymous and to mean ''state appropriated water rights which are recognized by the Utah Constitution or Utah Code;'' at Utah Admin. R. 645–105–314, Utah proposed to add a new blaster certification rule that would require candidates for certification to be twenty-one years of age or older; at Utah Admin. R. 645–301–525.130, Utah proposed to add a new provision requiring a permit applicant to give a copy of the pre-subsidence survey and any technical assessment or engineering evaluation to the water conservancy district, if any, where the mine is located; at Utah Admin. R. 645–301–525.700, the State proposed to add a new requirement that the underground mine operator mail a notification of proposed mining to the water conservancy district, if any, in which the mine is located; at Utah Admin. R. 645–301–728.350, the State proposed to revise its rule to require that determinations of probable hydrologic consequences include

findings on whether underground coal mining and reclamation activities conducted after October 24, 1992, may result in contamination, diminution, or interruption of ''State-appropriated Water'' in existence within the proposed permit or adjacent areas at the time the application is submitted, and to delete the existing phrase ''and used for legitimate purposes within the permit or adjacent areas * * *'' at the end of that sentence; at Utah Admin. R. 645–301–860.110 through ''860.112, Utah proposed to add new requirements for companies that issue surety bonds to meet to provide the State with standards by which to judge their financial stability; at Utah Admin. R. 645–400–162 and 645–400–381, the State proposed to change its existing references to section 40–10–22 of the Utah Code Annotated (UCA) to reference UCA 40–10–19 so on-site compliance conferences will not be considered inspections in the context of that statutory provision; in the enforcement rule at Utah Admin. R. 645–400–319, Utah proposed to change the existing reference to Utah Admin. R. 645–300–147 to cite Utah Admin. R. 645–300–148 instead, which requires permittees to submit ownership and control information to the Division of Oil, Gas and Mining (DOGM); and at Utah Admin. R. 645–400–322, the State proposed to add the phrase ''* * * which does not create an imminent danger or harm for which a * * *'' to complete the sentence and characterize situations in which it will issue notices of violation rather than cessation orders.

We announced receipt of the proposed amendment in the May 17, 2002, **Federal Register** (67 FR 35077). 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. UT–1163). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on June 17, 2002. We received comments from one State agency and two Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Revisions to Utah's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Utah's proposed revisions to the following rules contain wording that is the same as or similar to the corresponding sections of the Federal regulations (which are noted in parentheses):

1. Utah Admin. R. 645–400–162 and 645–400–381, changes existing references to section 40–10–22 of the Utah Code Annotated (UCA) to reference UCA section 40–10–19 instead, so on-site compliance conferences will not be considered inspections in the context of that statutory provision (30 CFR 840.16(b) and 843.20(a), respectively);

2. Utah Admin. R. 645–400–319, changes the existing reference to Utah Admin. R. 645–300–147 to reference 645–300–148 instead, which requires permittees to submit ownership and control information to DOGM (30 CFR 843.11(g)); and

3. Utah Admin. R. 645–400–322, adds the phrase ''* * * which does not create an imminent danger or harm for which a * * *'' to complete the sentence and characterize situations in which DOGM will issue notices of violation rather than cessation orders (30 CFR 843.12(a)(2)).

Because these proposed rules contain wording that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

B. Revisions to Utah's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Utah Admin. R. 645–100–200, Definition of ''Water Supply,'' ''State-appropriated Water,'' and ''State-Appropriated Water Supply''

Utah proposes to delete its existing definition of ''State-appropriated water supply'' and replace it with a combined definition of the terms ''water supply,'' ''State-appropriated water,'' and ''State-appropriated water supply.'' Under the proposed combined definition, the three terms '' * * * are all synonymous and mean, for the purposes of the R645 Rules, state appropriated water rights which are recognized by the Utah Constitution or Utah Code.'' The Federal counterpart term ''drinking, domestic or residential water supply'' is defined at 30 CFR 701.5.

In the December 4, 2001, **Federal Register** (66 FR 62917), we approved the existing definition of ''State-appropriated water supply'' in amendment UT–037–FOR. We found Utah's definition of that term was no less effective than the Federal definition of the counterpart term ''drinking, domestic, or residential water supply.'' As we approved it, ''State-Appropriated Water Supply'' meant ''State-created water rights which are recognized under the provisions of the Utah Code.'' Our approval noted that Utah's definition was based on its use of the term ''State-appropriated water'' at UCA 40–10–18(15)(c). ''State-appropriated water'' is not defined in title 40 of Utah's Code. However, in a January 29, 1997, letter (Administrative Record No. UT–1094), Utah asserted that use of the term ''State-appropriated water'' in its Code provides broader water replacement protection than the Federal term because the State's term includes the ''* * * universe of legal water uses by the universe of legal water users * * *.'' As such, ''State-appropriated water'' includes drinking, domestic, or residential water supplies from wells or springs and water used for other purposes, including agricultural irrigation and industrial water. The Federal term is limited to drinking, domestic or residential water supply from a well or spring unless the water supply is for direct human consumption, human sanitation, or domestic use. We accepted Utah's explanation in our August 4, 1997, approval of UT–035–FOR (62 FR 41845) and relied on it, in part, for our approval of Utah's definition of ''State-appropriated water supply'' in amendment UT–037–FOR (*Id.*)

Our approval of Utah's definition of ''State-appropriated water supply'' in UT–037–FOR also was based on information the State provided to us in response to a question we asked in our October 1, 1998, letter describing our concerns for that amendment (Administrative Record No. 1125). We asked Utah to further clarify its interpretation of the term ''State-appropriated water supply'' to address whether legal water rights exist in the State that are recognized by Utah law but are not created by the State. Utah responded to our questions in an October 31, 2000, letter (Administrative Record No. UT–1145). As we noted in our approval of UT–037–FOR (*Id.*, at 62928), Utah said the provisions of UCA 73–5–13 recognize water claims established by diversion (''diligence rights'') before Utah became a State and before it established the State Engineer's Office. The State's response concluded that ''State-appropriated water'' includes territorial water rights. Because the definition of the term ''State-appropriated water supplies'' as proposed in amendment UT–037–FOR was based on Utah's interpretation of ''State-appropriated water,'' we found it to be no less effective than the Federal term ''drinking, domestic or residential water supply'' and approved it.

Utah's combined definition of ''water supply,'' ''State-appropriated water,'' and ''State-appropriated water supply'' as proposed in this amendment refers to State-appropriated water rights recognized by the Utah Constitution and the Utah Code. Replacing the phrase ''State-created water rights'' in the existing definition with the phrase ''state appropriated water rights'' in the proposed definition accommodates the assertion that water rights existing before Utah became a State were not created by the State but nevertheless are recognized by Utah law. Further, DOGM explained that referring to water rights recognized by the Utah Constitution gives additional support to recognizing existing water rights that were established before Utah became a State (Administrative Record No. UT–1167). It also recognizes that mining might affect those water rights.

We searched Utah's R645 rules for the terms ''water supply,'' ''State-appropriated water,'' and ''State-appropriated water supply'' to determine if there are any uses of those terms that would conflict with the proposed definition. Those terms appear separately or together in definitions of: ''Community or industrial building;'' ''essential hydrologic functions;'' ''developed water resources'' as referred to in the definition of ''land use;'' ''renewable resource lands'' as used for the purposes of Utah Admin. R. 645–103; ''replacement of water supply;'' and ''State-appropriated water supply'' (to be replaced by the proposed combined definition). Those terms also appear separately or in combination at: Utah Admin. R. 645–103–322.300; –525.110, 120, and 130; –525.214; –525.400 and 480; –525.550; –728.350; and –731.530, 710, and 800. Utah's proposed definition is consistent with the context in which the terms are used in these rules. Making the three terms synonymous makes their use consistent throughout Utah's rules, reducing uncertainty over their intended meaning.

As proposed, the combined definition of the terms ''water supply,'' ''State-appropriated water'' and ''State-appropriated water supply'' recognizes water rights established before and after Utah became a State. Making the terms synonymous invokes the full protections provided by the State's rules wherever those terms appear for water rights that the Utah Constitution and Code recognize. The State's proposed definition also provides a potentially broader scope of water protection than does the Federal counterpart term ''drinking, domestic or residential water supply.'' Based on this reasoning, we find Utah's proposed definition is no less effective than the counterpart term's definition.

2. Utah Admin. R. 645–105–312, –313, and –314, Blaster Training, Examination, and Certification: Minimum Age

Utah proposes to add a new rule at Utah Admin. R. 645–105–314 that requires candidates for blaster certification to be 21 years of age or older. It also proposes to change Utah Admin. R. 645–105–312 and –105–313 to remove and add the word ''and'' after each clause, respectively, in view of adding the new rule at 645–105–314. Utah proposes these changes to make its rules consistent with Federal law for explosives handling. There is no provision in the 30 CFR regulations or SMCRA that expressly requires candidates for blaster certification to be at least 21 years old.

Explosive materials are within the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms (ATF) of the U.S. Department of the Treasury (U.S. Treasury). Federal regulations at 27 CFR Chapter I, Part 55, establish requirements for the shipment, transportation, and possession of explosive materials. They also impose requirements on granting licenses to individuals to engage in the business of importing, manufacturing, and dealing in explosive materials. Further, those regulations include requirements imposed on issuing permits to people who intend to acquire explosive materials for use. ATF defines explosive materials as ''explosives, blasting agents, water gels, and detonators.'' Subsections 55.26(c) and (c)(1) state that ''[n]o person shall knowingly distribute explosive materials to any individual who * * * is under twenty-one years of age * * *.'' Further, section 55.49(b) and (b)(1) state that ''[t]he Chief, Firearms and Explosives Licensing Center, shall approve a properly executed application for a license or permit, if * * * the applicant is 21 years of age or older * * *.'' Clearly, the intent of these Federal regulations is to restrict explosives handling, possession, and transport to individuals 21 years of age or older. Utah's proposed rule is consistent with these Federal regulations governing explosive materials.

In addition, Utah's rules for blaster training, examination and certification refer to knowledge of, and compliance with, Federal regulations and laws for explosives. At Utah Admin. R. 645–105–220, the State's rules note that ''[t]raining includes, but is not limited to, the technical aspects of blasting operations, and Utah and Federal laws governing the storage, transportation, and use of explosives.'' The Federal counterpart for this rule is found at 30 CFR 850.13(a)(1) and is worded similarly. Utah Admin. R. 645–105–240 goes on to say that ''Training will include course work in, and discuss the practical application of: * * * * 247. Current federal and Utah rules applicable to the use of explosives * * *.'' The Federal counterpart to this rule is 30 CFR 850.13(b)(7) and is worded the same. Utah Admin. R. 645–105–441.300 further provides that a blaster certification may be suspended or revoked for ''[v]iolation of any provision of Utah or federal explosives laws or regulations * * *.'' The Federal counterpart regulation is found at 30 CFR 850.15(b)(iii) and is worded the same.

We find Utah's proposed rule is consistent with the intent of its rules and the counterpart Federal regulations for blaster training, examination, and certification in general. We also find that it is consistent with, and no less effective than, the ATF's regulations requiring persons engaging in the explosives business or using explosives to be at least 21 years of age.

3. Utah Admin. R. 645–301–525.130 and Utah Admin. R. 645–301–525.700, Pre-subsidence Surveys and Public Notice of Proposed Mining: To Whom a Permit Applicant Must Give Copies of Pre-subsidence Surveys

Utah proposes to include water conservancy districts among those to whom it gives pre-subsidence surveys and notices of proposed mining. Specifically, it proposes to revise Utah Admin. R. 645–301–525.130 by adding the phrase ''* * * the water conservancy district, if any, in which the mine is located * * *'' near the end of the last sentence. The resulting change requires permit applicants to give a copy of a pre-subsidence survey and any technical assessment or engineering evaluation to the water conservancy district, if any, where the mine is located in addition to giving copies to the property owner and DOGM. Such surveys describe the condition of certain buildings, dwellings and related structures and the quantity and quality of all State-appropriated water supplies in the permit and adjacent areas that might be adversely affected by subsidence. The proposed revision to Utah Admin. R. 645–301–525.700 adds the phrase '' * * * to the water conservancy district, if any, in which the mine is located and * * *'' to the second sentence. That change requires the underground mine

operator to mail a notification of proposed mining to the water conservancy district, if any, in which the mine is located in addition to all owners and occupants of surface property and structures above the underground workings at least six months prior to mining, or within a different period if approved by DOGM. This notice identifies specific areas where mining will occur, dates when specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

Utah's existing rules provide for the same distribution of pre-subsidence surveys and public notices of proposed mining that the counterpart Federal regulations do. The Federal counterparts to Utah Admin. R. 645–301–525.130 and 645–301–525.700 are found at 30 CFR 784.20(a)(3) and 817.122, respectively. The existing Federal and State provisions require permit applicants to give pre-subsidence surveys, technical assessments, and engineering evaluations to property owners and to the regulatory authority and DOGM, respectively. DOGM is the regulatory authority in Utah. Both also require operators to mail public notices of proposed mining to all owners and occupants of surface property and structures above the underground workings. As currently written and approved, Utah's existing rules meet the minimum standard set by the Federal regulations.

Adding the new phrases to Utah's rules extends the distribution of its pre-subsidence surveys and public notices of proposed mining to more parties than required by the Federal regulations. The Federal regulations do not include water conservancy districts among the recipients of pre-subsidence surveys or public notices of proposed mining. That does not preclude Utah from including them in its rules, however. By including water conservancy districts among the recipients of pre-subsidence surveys and public notices of proposed mining, Utah recognizes the interest such districts have in the possible effects underground mining-related subsidence can have on State-appropriated water supplies and when those effects might begin to occur. Moreover, section 505(b) of SMCRA provides that ''Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface mining and reclamation operation than do the provisions of this Act or any regulations issued pursuant thereto shall not be construed to be inconsistent with this Act.'' We find Utah's rules are no less effective than the counterpart Federal regulations as proposed with the added phrases.

4. Utah Admin. R. 645–301–728.350, Probable Hydrologic Consequences Determinations for Underground Coal Mining and Reclamation Activities

Utah proposes to make three changes to Utah Admin. R. 645–301–728.350. The existing rule requires the probable hydrologic consequences (PHC) determination to include findings on whether underground coal mining and reclamation activities conducted after October 24, 1992, ''* * * may result in contamination, diminution or interruption of State-appropriated water in existence at the time the application is submitted and used for legitimate purposes within the permit or adjacent areas.'' Utah proposes to replace the word ''water'' with ''Water'' (changing the small case ''w'' to upper case ''W''). It also proposes to delete the final phrase that reads '' * * * and used for legitimate purposes within the permit or adjacent areas * * *'' and replace it with the phrase '' * * * within the proposed permit or adjacent areas * * *'' after the word ''existence.'' As proposed, the rule would require PHC determinations to include findings on whether underground coal mining and reclamation activities conducted after October 24, 1992, may contaminate, diminish, or interrupt ''* * * State-appropriated Water in existence within the proposed permit or adjacent areas at the time the application is submitted.''

The counterpart Federal regulation is found at 30 CFR 784.14(e)(3)(iv). It requires the PHC determination to include findings on whether the underground mining activities conducted after October 24, 1992, may contaminate, diminish or interrupt ''* * * a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.''

Utah's proposed rule differs from the counterpart Federal regulation in its use of the term ''State-appropriated Water'' where the Federal regulation refers to ''a well or spring * * * used for domestic, drinking, or residential purposes * * *.'' As noted in our previous finding, Utah's proposed combined definition of ''Water Supply,'' ''State-appropriated Water,'' and ''State-appropriated Water Supply,'' makes those terms synonymous to mean ''* * * state appropriated water rights which are recognized by the Utah Constitution or Utah Code.'' In that finding, we concluded that Utah's proposed definition is no less effective than the definition of the Federal counterpart term ''drinking, domestic or residential water supply'' at 30 CFR 701.5. The Federal term ''drinking, domestic or residential water supply'' is defined in part to mean '' * * * water received from *a well or spring* and any appurtenant delivery system that provides water for direct human consumption or household use'' (emphasis added). As such, Utah's use of the term ''State-appropriated Water'' in its proposed rule is analogous to the counterpart Federal regulation's reference to ''a well or spring * * * used for domestic, drinking, or residential uses * * *.''

There are other differences between the wording of Utah's proposed rule and the counterpart Federal regulation. Utah's proposed rule requires the PHC determination to find if underground mining will adversely affect State-appropriated Water existing in the permit or adjacent areas when the application is submitted, but it does not expressly mention use of the water or where it is used. By comparison, the counterpart Federal regulation specifies that the PHC determination find if underground mining will adversely affect a well or spring existing at the time a permit application is submitted and used for domestic, drinking or residential purposes in the permit or adjacent areas. As stated before, in Utah's proposed combined definition, ''State-appropriated Water'' means State-appropriated water rights that are recognized by the Utah Constitution or Utah Code. We interpret section 717(a) of SMCRA as requiring deference to State water law on questions of water allocation and use (60 FR 16722, 16733; March 31, 1995). Title 73 of the Utah Code is entitled ''Water and Irrigation.'' Under the prior appropriation system of Utah water law, a water user who first puts water to use has the water right, and a water right is perfected when water is put to use (sections 73–3–1 and 73–3–17, respectively). As the State quoted in its January 29, 1997, letter (Administrative Record No. UT–1094) the Utah Supreme Court's discussion of *J.J.N.P. Co.* v. *State of Utah ex rel. Division of Water Resources,* 655 P.2d 1133 (Utah 1982) cited the provision of section 73–1–3 of the Utah Code (entitled ''Beneficial use basis of right to use'') in explaining that:

> * * * individuals have no ownership interest as such in natural waters, only the right to put the water to certain uses. 'Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state,' § 73–1–3, and the right to

beneficial use may be acquired only by compliance with the legal procedures for appropriation of a given right.

Though Utah's proposed rule does not expressly mention water use, the term ''State-appropriated Water'' in its rule, by definition, invokes State-appropriated water rights recognized by the Utah Constitution or the Utah Code. Utah water rights, in turn, are based on putting water to beneficial use. In the context of water use in a predominantly semi-arid State such as Utah, we interpret the descriptive term ''beneficial use'' as stated by the Utah Supreme Court to include using water for domestic, drinking, and residential purposes. Therefore, we believe it is reasonable and consistent with Utah water law to interpret Utah's proposed rule as implying water use by referring to ''State-appropriated Water.''

Similar reasoning applies to the question of where the water use must occur to be considered in the PHC determination's finding of potential adverse effects under Utah's proposed rule. Proposed Utah Admin. R. 645–301–728.350 addresses State-appropriated Water in existence within the proposed permit or adjacent areas at the time the application is submitted. As explained above, water use is a basis for a water right, and the definition of ''State-appropriated Water'' means State-appropriated water rights that are recognized by the Utah Constitution or Utah Code. Therefore, we believe it is reasonable and consistent with Utah water law to interpret Utah's proposed rule as applying to beneficial use of State-appropriated Water in the proposed permit or adjacent areas. Removing the reference to use for ''legitimate purposes'' does not reduce the rule's effectiveness. By recognizing water use for beneficial purposes as the basis of a water right, Utah water law confers legitimacy on such use. Moreover, the counterpart Federal regulation does not refer to ''use for legitimate purposes'' in its description of water use for domestic, drinking, or residential purposes, either.

The State explained that removing the word ''water'' with a small case ''w'' and replacing it with ''Water'' in the term ''State-appropriated Water'' does not alter the meaning of that term (Administrative Record No. UT–1169). Utah explained that ''State-appropriated Water'' at Utah Admin. R. 645–301–728.350 has no meaning other than the one proposed in this amendment for the combined definition of ''Water Supply,'' ''State-appropriated Water,'' and ''State-appropriated Water Supply'' at Utah Admin. R. 645–100–200. We found Utah's definition to be no less effective than the definition of the counterpart Federal term ''drinking, domestic and residential water supply'' in finding III.B.1 of this final rule.

Based on the reasoning presented above, we find proposed Utah Admin. R. 645–301–728.350 is consistent with titles 40 and 73 of the Utah Code and is no less effective than the counterpart Federal regulation at 30 CFR 784.14(e)(3)(iv).

5. Utah Admin. R. 645–301–860.110, –860.111, and –860.112, Surety Bonds

The State proposed to revise and add requirements at Utah Admin. R. 645–301–860.110 through –860.112 that surety companies must meet in order to issue bonds for coal mines in Utah and that operators must comply with to ensure that they hold bonds issued by companies that meet the requirements of –860.110. Specifically, the State proposed to revise Utah Admin. R. 645–301–860.110 to require surety companies that issue bonds in Utah to have an A.M. Best rating of A− or better or an A.M. Best Financial Performance Rating (FPR) of 8 or better, and to be continuously listed in the current issue of the U.S. Treasury's *Circular 570*. *Circular 570* lists surety companies holding Certificates of Authority from the U.S. Treasury. Utah also proposed to add Utah Admin. R. 645–301–860.111, which gives operators 120 days to obtain a surety bond with companies that meet the standards of proposed –860.110 (if they do not have such a bond already) or face enforcement action. Under proposed Utah Admin. R. 645–301–860.112, if DOGM notifies an operator that a surety company guaranteeing its performance does not meet the standard of –860.110, the operator has 120 days to correct the problem or face enforcement action.

The Federal counterpart regulation at 30 CFR 800.20(a) only requires that ''[a] surety bond shall be executed by the operator and a corporate surety licensed to do business in the State where the operation is located.''

Utah intends to establish a more secure bonding program with these proposed additional rule requirements. In order to avoid inadequate bond coverage due to surety company insolvencies, Utah proposed to allow only surety companies deemed to be financially strong by A.M. Best and listed in *Circular 570* to issue bonds to guarantee coal mine reclamation performance in Utah.

A.M. Best is recognized as the leading provider of independent ratings of an insurance/surety company's financial strength and ability to meet its obligations. A.M. Best assigns a rating after it conducts an extensive quantitative and qualitative evaluation of a surety company's financial strength, operating performance, and market profile. While having an A− [excellent] rating or a Financial Performance Rating of 8 or better from A.M. Best is no guarantee that an insolvency will not occur, accepting surety bonds only from surety companies that meet the financial criteria to *earn* these ratings indicates that insolvency is far less likely.

A.M. Best's highest ratings are A++ and A+, which indicate a superior financial condition. A Best's rating of A− indicates that a company's overall financial condition is excellent. As A.M. Best stated, earning a Financial Performance Rating (FPR) of 8 or better from A.M. Best means a ''* * * company has, on balance, very strong financial strength, operating performance and market profile when compared to the standards established by the A.M. Best Company. These companies, in [its] opinion, have a strong ability to meet their ongoing obligations to policy holders.''

Requiring a surety company to be listed in the U.S. Treasury's *Circular 570* provides additional assurance that a surety company is able to meet its obligations according to the financial requirements at 31 CFR part 223. Utah's proposal to require that surety companies be listed in *Circular 570* applies to all of Utah's coal mining surety bonds, notwithstanding Federal lands and Federal co-obligees.

The U.S. Treasury establishes a per-bond underwriting limitation based on its in-depth financial analysis of a surety company that applies for authorization to write Federal bonds. Surety companies that are granted a Certificate of Authority are listed in *Circular 570*. Each year, surety companies have to re-apply to be listed. The U.S. Treasury requires listed companies to submit quarterly reports that list all bonds issued on which the United States is an obligee or co-obligee. If at any time the U.S. Treasury determines that a surety company no longer meets the financial criteria to be listed in *Circular 570*, the U.S Treasury terminates the surety company's Certificate of Authority. Often, A.M. Best's downgrades of surety companies correspond to the U.S. Treasury's terminations of surety companies. Utah's proposal provides the State with the ability to be pro-active in its efforts to maintain a more secure bonding program.

Utah's proposal to give operators 120 days to comply with the requirement to have bonds with companies that meet the new standards should provide

adequate time for operators to seek surety bonds or other allowable forms of bond with surety companies that meet the proposed standards.

For the reasons described above, we find proposed Utah Admin. R. 645–301–860.110, –860.111, and –860.112 are no less stringent than SMCRA and no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in letters dated April 2, 2002, and in the May 17, 2002, **Federal Register** (Administrative Record Nos. UT–1163 and UT–1170, respectively). We received comments from one State agency and two Federal agencies. We did not receive any public comments on the proposed amendment.

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. UT–1163).

On April 9, 2002, the Ogden regional office of the U.S. Department of Agriculture, Forest Service, called us to say the Forest Service had no comments on the amendment (Administrative Record No. UT–1164).

In a letter dated April 18, 2002, the U.S. Department of the Interior, Fish and Wildlife Service responded to our request by stating that it had no comments on the amendment (Administrative Record No. UT–1168).

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 EPA's comments on the amendment under 30 CFR 732.17(h)(11)(i) (Administrative Record No. UT–1163). EPA did not respond to our request.

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. In letters dated April 2, 2002, we requested comments on Utah's amendment from the SHPO and ACHP (Administrative Record No. UT–1163).

The Utah SHPO responded to our request for comment in a letter dated April 12, 2002 (Administrative Record No. UT–1165). The SHPO found that the proposed amendment has no potential to affect cultural resources.

We did not receive any comments on the amendment from the ACHP.

V. OSM's Decision

We approve Utah's amendment based on the findings presented above.

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 the State's program to demonstrate 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.

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 conducted the reviews required by section 3 of Executive Order 12988 and 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 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 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), the Small Business Regulatory Enforcement Fairness Act. This rule: a. Does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 2002.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

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 November 6, 2002 to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
March 28, 2002	November 6, 2002	Definition of ''Water Supply,'' ''State-appropriated Water,'' and ''State-appropriated Water Supply'' at Utah Admin. R. 645–100–200; Utah Admin. R. 645–105–310 through –314; R. 645–301–525.130 and –525.700; Utah Admin. R. 645–301–728.350; R. 645–301–860.110 through –860.112; R. 645–400–162; and R. 645–400–319, –322, and –381.

[FR Doc. 02–28197 Filed 11–5–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY–029–FOR]

Wyoming Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving a proposed amendment to the Wyoming regulatory program (the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposed revisions to its Coal Rules about groundwater and surface water hydrology, coal mine waste impoundments, alluvial valley floors and threatened and endangered plant species. The State intended to revise its program to be consistent with the corresponding Federal regulations, provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550, Internet address: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act'; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.11, 950.12, 950.16 and 950.20).

II. Submission of the Proposed Amendment

By letter dated July 20, 2001, Wyoming sent us an amendment to its program (administrative record no. WY–