those countries entitled to reciprocal privileges and designates the extent of the exemptions allowed.

In accordance with 19 U.S.C. 1309(d), the Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration, Department of Commerce, has advised the Customs Service by letter dated April 17, 1995, that following an appropriate investigation, it has been found that the Governments of Abu Dhabi, Bahrain, Oman and Qatar allow or would allow to aircraft of United States registry exemption privileges, in connection with international commerce operations, substantially reciprocal to those exemption privileges provided to aircraft of foreign registry by sections 309 and 317 of the Tariff Act of 1930, as amended. The effective date of this finding is June 1, 1994.

This document amends the list in § 10.59(f), Customs Regulations (19 CFR 10.59(f)) by adding Abu Dhabi, Bahrain, Oman and Qatar to the list of countries entitled to reciprocal privileges.

Authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations Branch.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because the subject matter of this document does not constitute a departure from established policy or procedures, but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that the notice and public comment procedures thereon are unnecessary. Further, for the same reasons and because Abu Dhabi, Bahrain, Oman and Qatar have been found to be presently granting reciprocal exemption privileges to U.S.-registered aircraft, it has been determined, pursuant to 5 U.S.C. 553(d)(1) and (3), that a delayed effective date is not required. Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects in 19 CFR Part 10

Aircraft, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

To reflect the reciprocal privileges granted to aircraft registered in Abu Dhabi, Bahrain, Oman and Qatar, part 10, Customs Regulations (19 CFR part 10) is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 continues to read, in part, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Section 10.59 also issued under 19 U.S.C. 1309, 1317;

* * * * *

§ 10.59 [Amended]

2. Section 10.59(f) is amended in the table by adding to the column headed ''Country'', in appropriate alphabetical order, ''Abu Dhabi'', ''Bahrain'', ''Oman'', and ''Qatar'' and by adding ''95–45'' adjacent to the names of the above-listed countries in the column headed ''Treasury Decision(s)''.

Dated: May 23, 1995.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 95–13070 Filed 5–26–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with an exception and additional requirements, a proposed amendment to the Utah regulatory program (hereinafter referred to as the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to and additions of rules pertaining to retention of highwalls in the postmining landscape. Utah submitted the amendment with the intent of revising its program to be consistent with the corresponding Federal regulations, clarifying ambiguities, and improving operational efficiency.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Acting Director, Albuquerque Field Office, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, 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, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 12, 1993, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–875). Utah submitted the proposed amendment at its own initiative and in response to the required State program amendments codified at 30 CFR 944.16 (a), (b), (c), and (d). The provisions of the Utah Administrative Rules (Utah Admin. R.) that Utah proposed to revise were: Utah Admin. R. 645–301–553.200, spoil and waste; Utah Admin. R. 645–301–553.252, refuse piles; Utah Admin. R. 645-301–553.500, previously mined areas (PMA's), continuously mined areas (CMA's), and areas subject to the approximate original contour (AOC) requirements; Utah Admin. R. 645–301–553.520, exception from complete highwall elimination for CMA's; Utah Admin. R. 645–301–553.523, stability criteria for highwall remnants and retained highwalls; Utah Admin. R. 654–301–553.600 and .620, AOC variances for incomplete elimination of highwalls in PMA's or CMA's; Utah Admin. R. 654–301–553.631, mountaintop removal operations; Utah Admin. R. 654–301–553.650, required showing by the operator and required findings by the regulatory authority necessary for approval of a retained highwall; Utah Admin. R. 645–301–651, height restrictions for retained highwalls; Utah Admin. R. 645–301–553.652, the applicability date of Utah's AOC standards at Utah Admin. R. 645–301.553.651 through .655; Utah Admin. R. 645–301–553.653, the restoration of retained highwalls to cliff-type habitats required by the flora and fauna existing prior to mining; and Utah Admin. R. 645–301–553.654, compatibility of retained highwalls with both the

approved postmining land use and the visual attributes of the area.

OSM announced receipt of the proposed amendment in the December 8, 1993, **Federal Register** (58 FR 64529), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–879). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 7, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of Utah Admin. R. 645.–301–553.110, backfilling and grading of disturbed areas; Utah Admin. R. 645–301–553.500 and .600, the organization of Utah's rules pertaining to retained highwalls; Utah Admin. R. 645–301–553.510 and .522, general backfilling and grading requirements; Utah Admin. R. 645–301–553.522, slope stability and drainage; Utah Admin. R. 645–301–553.500 and .523, stability criteria for retained highwalls; Utah Admin. R. 645–301–553.620, AOC variances; Utah Admin. R. 645–301–553.650, AOC and stability requirements for highwall retention; Utah Admin. R. 645–301–553.651, height and length of retained highwalls; Utah Admin. R. 645–301–553.652, the applicability date of Utah's AOC alternative; and various editorial comments concerning Utah Admin. R. 645–301–553.120, .631, .650, and .655. By letter dated March 31, 1994, OSM notified Utah of the concerns (administrative record No. UT–908).

By letter dated April 18, 1994, Utah requested a meeting between the Utah Division of Oil, Gas and Mining (Division) and OSM for the purpose of addressing the issues set forth by OSM in the March 31, 1994, letter (administrative record No. UT–918). On May 12, 1994, the Division and OSM held an executive session at the Western Support Center in Denver, Colorado. OSM posted a notice of the executive session in the Western Support Center (administrative record No. UT–925). OSM summarized the session and entered the summary into the administrative record (administrative record UT–942).

By letter dated June 29, 1994, Utah submitted a revised amendment in response to OSM's March 31, 1994, letter as clarified at the May 12, 1994, session (administrative record No. UT–941). In this submittal, Utah, at its own initiative, also proposed to (1) create a definition of the term ''continuously mined areas'' and (2) not use the terms ''highwall remnant'' and ''retained highwall.''

OSM announced receipt of the proposed revised amendment in the July 14, 1994, **Federal Register** (59 FR 35871) and reopened and extended the public comment period (administrative record No. UT–951). The public comment period ended on July 29, 1994.

During its review of the revised amendment, OSM identified additional concerns relating to the provisions of Utah Admin. R. 645–100–200, definition of the term ''continuously mined areas;'' Utah Admin. R. 645–301–553, general provisions on highwalls and backfilling and grading; Utah Admin. R. 645–301–553.110, backfilling and grading of disturbed areas; Utah Admin. R. 645–301–553.120, backfilling and grading of spoil and waste; Utah Admin. R. 645–301–553.130, slope stability requirements; Utah Admin. R. 645–301–553.510, remining operations on PMA's, CMA's, and areas with remaining highwalls subject to AOC provisions; Utah Admin. R. 645–301–553.550, .551, and .552, AOC exceptions; Utah Admin. R. 645–301–553.650, highwall management under the AOC provisions; Utah Admin. R. 645–301–553.651, nonmountaintop removal mining on steep slopes; Utah Admin. R. 645–301–553.652, remaining highwalls under the AOC provisions; and Utah Admin. R. 645–301–553.653, applicability date. By letter dated August 24, 1994, OSM notified Utah of the concerns (administrative record No. UT–967).

By telephone conversation on August 30, 1994, Utah requested a meeting between the Division and OSM for the purpose of addressing the date of applicability of Utah's rules that allow the replacement of preexisting cliffs or similar natural premining features with retained highwalls (administrative record No. UT–1010). On September 7, 1994, the Division and OSM held an executive session at the Western Support Center in Denver, Colorado. OSM posted a notice of the executive session in the Western Support Center (administrative record No. UT–969). OSM summarized the session and entered the summary into the administrative record (administrative record UT–970).

By letter dated November 3, 1994, Utah submitted a revised amendment in response to OSM's August 24, 1994, letter, as clarified at the September 7, 1994, session (administrative record No. UT–990).

OSM announced receipt of the proposed revised amendment in the December 2, 1994, **Federal Register** (59 FR 61855) and reopened and extended the comment period (administrative record No. UT–996). The public comment period ended on December 19, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with an exception and additional requirements, that the proposed program amendment submitted by Utah on November 12, 1993, and as revised by it on June 28 and November 3, 1994, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception, the proposed amendment and requires Utah to revise its program.

The Director notes that in a December 13, 1982, final rule **Federal Register** notice (47 FR 55672, 55673), the Secretary of the Interior approved as part of the Utah program a provision that the Director in a subsequent September 17, 1993, final rule **Federal Register** notice (58 FR 48600) referred to as the Utah ''AOC alternative.'' OSM created the term ''AOC alternative'' and Utah does not define it in its program. In this proposed amendment, Utah used the terminology ''areas with remaining highwalls subject to the AOC provisions,'' which is the Utah counterpart terminology to what OSM referred to in the past as the ''AOC alternative.'' Accordingly, and throughout the remainder of this **Federal Register** notice, the Director refers to what was previously called the ''AOC alternative'' in the September 17, 1993, final rule **Federal Register** notice as ''areas with remaining highwalls subject to the AOC provisions.''

Also, in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600), the Director placed upon the Utah program four required State program amendments at 30 CFR 944.16 (a), (b), (c), and (d) (administrative record No. UT–872). Specifically, the **Federal Register** notice revised 30 CFR 944.16 to read as follows:

Section 944.16 Required Program Amendments

* * * * *

(a) By November 16, 1993, Utah shall submit a proposed amendment for highwall retention and approximate original contour (AOC) at Utah Admin. R. 645–301–553.650 to require that, prior to obtaining Utah's approval for highwalls to be retained, the operator must establish and Utah must find in writing that any proposed highwall will comply with the approximate original contour criteria at Utah Admin. R. 645–301–553.651 through 655 and the stability requirement at Utah Admin. R. 645–301–553.523.

(b) By November 16, 1993, Utah shall submit a proposed amendment for highwall

retention and approximate original contour at Utah Admin. R. 645–301–553.651 restricting the height of retained highwalls to the height of cliffs or cliff-like escarpments that were replaced or disturbed by the mining operations.

(c) By November 16, 1993, Utah shall submit a proposed amendment stating that its requirement at Utah Admin. R. 645–301–553.652 has an applicability date of December 13, 1982, and applies to any highwall retained pursuant to the approximate original contour alternative.

(d) By November 16, 1993, Utah shall submit a proposed amendment for Utah Admin. R. 645–301–553.523 (1) eliminating the inconsistency between the title ''previously mined areas'' at Utah Admin. R. 645–301–553.500 and the content of subsection Utah Admin. R. 645–301–553.523, and clarifying that the stability criteria of proposed Utah Admin. R. 645–301–553.523 apply to the AOC alternative at Utah Admin. R. 645–301–553.650, (2) specifying that a highwall remnant or retained highwall must not pose a hazard to the environment, and (3) deleting the phrase ''not to exceed either the angle of repose or such lesser slope as is necessary to.''

However, in an April 7, 1994, final rule **Federal Register** notice (59 FR 16538), OSM inadvertently removed the above required State program amendments from 30 CFR 944.16 (administrative record No. UT–913). In addition, and subsequent to this inadvertent removal of the required State program amendments originally codified at 30 CFR 944.16 (a), (b), (c), (d), OSM published two final rule **Federal Register** notices (July 11, 1994, 59 FR 35255; September 27, 1994, 59 FR 49185) and placed new required State program amendments on the Utah program at 30 CFR 944.15 (a) and (b) respectively (administrative record Nos. UT–947 and UT–977). Throughout this notice, OSM refers to the required amendments associated with this proposed amendment and originally codified as 30 CFR 944.16 (a), (b), (c), and (d) as ''the required amendments previously codified at 30 CFR 944.16 (a), (b), (c), and (d) (September 17, 1993, 58 FR 48600).''

1. Nonsubstantive Revisions to Utah's Rules

Utah proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial, grammatical, and recodification changes (corresponding Federal provisions are listed in parentheses):

Utah Admin. R. 645–301–553 (30 CFR 816.102 and 817.102), contemporaneous reclamation for backfilling and grading;

Utah Admin. R. 645–301–553.130 (30 CFR 816.102(a)(3)), 1.3 static safety factor;

Utah Admin. R. 645–301–553.150 (30 CFR 816.102(a)(5) and 817.102(a)(5)), postmining land use;

Utah Admin. R. 645–301–553.200 (30 CFR 816.102(c) and 817.102(c)) backfilling and grading of spoil and waste;

Utah Admin. R. 645–301–553.210 (30 CFR 816.71 and 817.71), general requirements for disposal of excess spoil;

Utah Admin. R. 645–301–553.220 (30 CFR 816.102(d) and 817.102(d)), placement of spoil;

Utah Admin. R. 645–301–553.252 (30 CFR 816.83(c)(4) and 817.83(c)(4)), final grading of refuse piles and coal mine waste;

Utah Admin. R. 645–301–553.300 (30 CFR 816.102(f) and 817.102(f)), covering of exposed coal seams;

Utah Admin. R. 645–301–553.510 (30 CFR 816.106(a) and 817.106(a)), remining operations on PMA's, CMA's, and areas with remaining highwalls subject to AOC provisions;

Utah Admin. R. 645–301–553.540, previously codified as Utah Admin. R. 645–301–553.524 (30 CFR 816.106(b)(4) and 817.106(b)(4)), spoil placement;

Utah Admin. R. 645–301–553.300, previously codified as Utah Admin. R. 645–301–553.653 (30 CFR Parts 816 and 817 concerning backfilling and grading requirements for both surface and underground mining operations and sections 515 (b)(2) and (b)(3) of SMCRA), modifications to retained highwalls restoring cliff-type habitats required by premining flora and fauna;

Utah Admin. R. 645–301–553.650.400, previously codified as Utah Admin. R. 645–301–553.654 (30 CFR 784.15 and sections 515 (b)(2) and (b)(3) of SMCRA), compatibility of retained highwalls with the approved postmining land use and visual attributes of the area; and

Utah Admin. R. 645–301–553.650.500, previously codified as Utah Admin. R. 645–301–553.655, exemption from obtaining a variance from AOC requirements.

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

2. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations and SMCRA

Utah proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses):

Utah Admin. R. 645–301–553.100 (30 CFR 816.102(a) and 817.102(a)), section entitled ''disturbed areas;'' and

Utah Admin. R. 645–301–553.230 (30 CFR 816.102(j) and 817.102(j)), general requirements for backfilling and grading.

Because these proposed Utah rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rule.

3. Utah Admin. R. 645–100–200, Definition of ''Continuously Mined Areas''

Utah proposed to define ''continuously mined areas'' (CMA's) at Utah Admin. R. 645–100–200 to mean ''land which was mined for coal by underground mining operations prior to August 3, 1977, the effective date of the Federal Act, and where mining continued after that date.'' The ''Federal Act'' is SMCRA.

The Federal backfilling and grading regulations at 30 CFR 817.106(a), (b), and (b)(1) allow an exception from the requirement for complete highwall elimination for underground mining operations that remine highwalls in PMA's, which means land affected by surface coal mining operations prior to August 3, 1977, the effective date of SMCRA, that have not been reclaimed to the standards of SMCRA (January 8, 1993, 58 FR 3466). These regulations allow for the incomplete elimination of such highwalls where the volume of all reasonably available spoil is insufficient to completely backfill the reaffected or enlarged highwall.

As part of the Utah program, the Director approved, in a September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48603), a limited exception to the requirement to completely eliminate all highwalls for CMA's. Utah's approved CMA rules differ from the Federal PMA regulations in that they extend the exception for incomplete highwall elimination to underground mining operations where the highwall was created prior to

August 3, 1977, but continued to be used thereafter.

In approving Utah's CMA provisions, the Director reasoned, in part, that they provide equitable treatment for pre-SMCRA mines that have operated continuously since before the effective date of SMCRA and afford the same variance from AOC requirements as is provided in the PMA regulations at 30 CFR 817.106 for remaining sites where operation of a pre-SMCRA mine has been interrupted and mining was begun again at the sites after the effective date of SMCRA.

Utah's proposed definition of ''continuously mined areas'' is limited in accordance with the Director's approval in the September 17, 1993, final rule **Federal Register** notice. That is, Utah's newly-proposed definition at Utah Admin. R. 645–100–200 limits the term to underground mining operations. In the aforementioned final rule **Federal Register** notice, OSM approved Utah's CMA provisions at Utah Admin. R./645–301–553.510, .520, and .521 ''[i]nsofar as they apply to underground mining operations that operated prior to August 3, 1977, and have continuously operated since that time.'' Therefore, Utah's proposed definition of the term ''continuously mined areas'' is not inconsistent with the Federal regulations at 30 CFR 817.106(a), (b), and (b)(1) and is in accordance with Utah's previously approved CMA provisions. On this basis, the Director approves Utah's proposed rule.

However, with respect to CMA's, the Director wishes to emphasize that the exception to the requirement to completely eliminate all highwalls should, like the similar Utah exception for PMA's, be narrowly construed and should ensure that the highwall is removed to the maximum extent technically practical (September 16, 1983, 48 FR 41720, 41729). Thus, for example, where an underground mining operation has been continuously mined since before the effective date of SMCRA (August 3, 1977) and contains both pre- and post-SMCRA face-up or portal areas, this exception must be understood as applying *only* to the pre-SMCRA face-up areas. Any post-SMCRA portal areas within the same mining operation must comply with the requirement to completely eliminate all highwalls. The Director interprets Utah's proposed definition of the term ''continuously mined areas'' in this limited fashion.

4. Utah Admin. R. 645–301–553.110, Exceptions to the Requirement That Disturbed Areas Achieve AOC

Utah proposed to revise existing Utah Admin. R. 645–301–553.110 to require that disturbed areas achieve AOC except as provided for in the reorganized and recodified provisions at Utah Admin. R. 645–301–500 through Utah Admin. R. 645–301–540 (PMA's, CMA's, and areas subject to the AOC provisions), Utah Admin. R. 645–301–553.600 through Utah Admin. R. 645–301–553.612 (PMA's and CMA's), Utah Admin. R. 645–302–270 (nonmountaintop removal on steep slopes), Utah Admin. R. 645–302–220 (mountaintop removal mining), Utah Admin. R. 645–301–553.700 (thin overburden), and Utah Admin. R. 645–301–553.800 (thick overburden). In conjunction with consolidating these exceptions into one provision, Utah also proposed to delete provisions that formerly existed at Utah Admin. R. 645–301–553.600 (introductory language), .610 (nonmountaintop removal on steep slopes), .620 (PMA's), .630 (mountaintop removal mining), .640 (introductory language), .641 (thin overburden), and .642 (thick overburden).

The Federal regulations at 30 CFR 816.102(k) provide variances from AOC for (1) steep-slope mining operations, (2) PMA's, (3) mountaintop removal operations, (4) thin overburden areas, and (5) thick overburden areas. The provisions at 30 CFR 817.102(k) provide variances from AOC for (1) steep-slope mining operations and (2) PMA's.

Utah's proposed revisions to Utah Admin. R. 645–301–553.110, which create a general AOC provision that references all exceptions to the requirement that disturbed areas must be backfilled and graded to achieve AOC, are consistent with the corresponding Federal regulations at 30 CFR 816.102(k) and 817.103(k) and clarify and improve the organizational nature of Utah's AOC rules. However, the cross-referenced provisions contain citation errors. Specifically, Utah's cross-referenced provisions in the phrase ''R645–301–500 through R645–301–540,'' regarding PMA's, CMA's, and areas subject to the AOC provisions, should read ''R645–301–*553*.500 through R645–301–*553*.540.'' Utah's incorrectly cross-referenced citations create a regulatory inconsistency within the Utah program.

For the reasons discussed above, the Director approves Utah's proposed consolidation of all exceptions to the requirement that disturbed areas must be backfilled and graded to achieve AOC into Utah Admin. R. 645–301–553.110. In addition, the Director approves Utah's proposed deletion of existing Utah Admin. R. 645–301–553.600 and those provisions identified above that formerly existed elsewhere in Utah's rules prior to the consolidation. However, the Director further requires Utah to revise the cross-referenced provisions in the phrase ''R645–301–500 through R645–301–540,'' regarding PMA's, CMA's, and areas subject to the AOC provisions, to read ''R645–301–*553*.500 through R645–301–*553*.540.''

5. Utah Admin. R. 534–301–553.120, Backfilling and Grading of Spoil and Waste

Utah proposed to revise existing Utah Admin. R. 645–301–553.120 to require that disturbed areas be backfilled and graded to ''[e]liminate all highwalls, spoil piles, and depressions, except as provided in R645–301–552.100 (small depressions); R645–301–553.500 through R645–301–540 (PMA's, CMA's, and areas subject to approximate original contour (AOC) provisions; R645–301–553.600 through R645–301–553.612 (PMA's and CMA's); and in R645–301–553.650 through R645–301–553.653 (highwall management under the AOC provisions).''

The Director notes that the exceptions listed at proposed Utah Admin. R. 645–301–553.120 for PMA's, CMA's, and areas subject to AOC provisions are exceptions only to the requirement to completely eliminate all highwalls, and are not exceptions to the separate requirements to completely eliminate all spoil piles and depressions.

The Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2) require that disturbed areas be backfilled and graded to eliminate all highwalls, spoil piles, and depressions except as provided in 30 CFR 816.102(h) (small depressions) and (k)(3)(iii) (previously mined highwalls).

Utah's proposed revisions to Utah Admin. R. 645–301–553.120, which create a general provision that cross-references all exceptions to the requirement that disturbed areas must be backfilled and graded to eliminate all highwalls, spoil piles, and depressions, are consistent with the corresponding Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2) and clarify and improve the organizational nature of Utah's rules. However, the cross-referenced provisions contain citation inconsistencies. Specifically, Utah's cross-referenced provisions in the phrase ''R645–301–553.500 through R645–301–540,'' regarding PMA's, CMA's, and areas subject to the AOC provisions, should read ''R645–301–553.500 through R645–301–*533*.540.'' In

addition Utah cross-references provisions in the phrase ''R645–301–553.650 through R645–301–553.653.'' However, Utah Admin. R. 645–301–553.653 no longer exists in Utah's reorganized rules and has now been recodified as Utah Admin. R. 645–301–553.651. Utah's incorrectly cross-referenced citations create a regulatory inconsistency within the Utah program.

For the reasons discussed above, the Director approves proposed Utah Admin. R. 645–301–553.120 but further requires Utah to (1) revise the cross-referenced provisions in the phrase ''R645–301–553.500 through R645–301–540,'' regarding PMA's, CMA's, and areas subject to the AOC provisions, to read ''R645–301–553.500 through R645–301–*553*.540'' and (2) revise the cross-referenced provisions in the phrase ''R645–301–553.650 through R645–301–553.653'' to read ''R645–301–553.650 through R645–301–553.*651*.''

6. Utah Admin. R. 634–301–553.500, PMA's, CMA's, and Areas With Remaining Highwalls Subject to AOC Provisions

In partial response to the required amendment previously codified at 30 CFR 994.16(d)(1) (September 17, 1993, 58 FR 48600), Utah proposed to revise the existing title of section Utah Admin. R. 645–301–553.500 to make it consistent with the content of subsections Utah Admin. R. 645–301–553.510 through .540. Specifically, Utah proposed to revise the title of section Utah Admin. R. 645–301–553.500 from ''Previously Mined Areas'' to ''Previously mined areas (PMA's), Continuously Mined Areas (CMA's), and Areas with Remaining Highwalls Subject to the AOC Provisions.''

Utah proposed this change to eliminate the inconsistency between the title ''Previously Mined Areas'' at Utah Admin. R. 645–301–553.500 and the content of recodified subsection Utah Admin. R. 645–301–553.530 (previously codified as .523), which addresses highwall stability criteria (see finding No. 9). The proposed title ''Previously mined areas (PMA's), Continuously Mined Areas (CMA's), and Areas with Remaining Highwalls Subject to the AOC Provisions'' for Utah Admin. R. 645–301–553.500 is consistent with the term ''remaining highwalls,'' which Utah uses at Utah Admin. R. 645–301–553.530 in place of the terms ''retained highwall'' and ''highwall remnant.''

The Director finds that Utah's proposed revisions to the title of section Utah Admin. R. 645–301–553.500 are not inconsistent with the Federal AOC, PMA, and CMA provisions at 30 CFR 816.102, 817.102, 816.106, and 817.106. The Director also finds that the proposed revisions satisfy the part of the required amendment previously codified at 30 CFR 944.16(d)(1) that applied to Utah Admin. R. 645–301–553.500. For these reasons, the Director approves Utah's proposed revisions to the title of section Utah Admin. R. 645–301–553.500.

7. Utah Admin. R. 634–301–553.520, Backfilling and Grading of Remaining Highwalls

Utah proposed to revise existing Utah Admin. R. 645–301–553.520 to make it consistent with the requirements for remaining operations on PMA's, operations on CMA's, and operations on areas with remaining highwalls subject to the AOC provisions. Specifically, Utah proposed to consolidate a phrase from original Utah Admin. R. 645–301–553.520 with the text of Utah Admin. R. 645–301–553.522 to create new Utah Admin. R. 645–301–553.520 which states that ''[t]he backfill of all remaining highwalls will be graded to a slope that is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.'' In conjunction with this consolidation, Utah deleted the citation previously codified at Utah Admin. R. 645–301–553.522.

The Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2) require that ''the backfill [from remaining operations on PMA's] shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.'' The Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2) apply only to remaining operations on PMA's. Utah's proposed rule differs from the Federal regulations in that Utah proposes to extend its rules concerning the backfilling and grading requirements for remaining highwalls to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions. Although there are no Federal regulations that directly correspond to Utah's application of its rule to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions, the Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2), as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to this Utah provision.

Utah's proposed revisions to Utah Admin. R. 645–301–553.520, regarding the requirements for remaining operations on PMA's, CMA's, and areas with remaining highwalls subject to the AOC provisions, are not inconsistent with the corresponding Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2). For this reason, the Director approves Utah's proposed revision to Utah Admin. R. 645–301–553.520.

8. Utah Admin. R. 645–301–553.530, Stability Criteria for Backfilling and Grading

In partial response to the required amendment previously codified at 30 CFR 944.16(d) (September 17, 1993, 58 FR 48600), Utah proposed to revise existing Utah Admin. R. 645–301–553.523, regarding highwall retention stability criteria. Utah proposed recodifying the rule as Utah Admin. R. 645–301–553.530 and relocating it under the reorganized section of its rules at Utah Admin. R. 645–301–553.500 entitled ''PMA's, CMA's and Areas with Remaining Highwalls Subject to the AOC Provisions,'' which was previously entitled ''previously mined areas'' (see finding No. 6). Utah also proposed to delete the phrase ''not to exceed either the angle of repose or such lessor slope as is necessary to'' from recodified Utah Admin. R. 645–301–553.530. Lastly, Utah proposed to revise the rule to require that (1) any remaining highwall will be stable and not pose a hazard to the public health or safety or to the environment, and (2) remaining highwalls must achieve a minimum long-term static safety factor of 1.3 and prevent slides, or meet an alternative criterion that the operator proposes and demonstrates to the satisfaction of the Division that the remaining highwall is stable does not pose a hazard to the public health and safety or to the environment.

By changing the PMA title of Utah Admin. R. 645–301–553.530 to include CMA's and areas with remaining highwalls subject to the AOC provisions, Utah in effect proposed that remaining highwalls on PMA's and CMA's and areas with remaining highwalls subject of the AOC provisions comply with the proposed stability criteria of Utah Admin. R. 645–301–553.530.

The Federal general backfilling and grading regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require that disturbed areas be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides. The Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) concerning backfilling and grading of PMA's require that any highwall remnant be stable and not pose a hazard to the public health and safety

or to the environment and that the operator shall demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable. The Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) apply only to remaining operations on PMA's. Utah's proposed rule differs from the Federal regulations in that Utah proposes to extend its rules concerning the stability criteria for backfilling and grading of remaining highwalls to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions. Although there are no Federal regulations that directly correspond to Utah's application of its rule to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions, the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3), as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to this Utah provision.

The Director emphasizes that, in all cases, the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require the backfill material at the base or against a highwall to have a minimum long-term static safety factor of 1.3 and prevent slides. The Director recognizes that a highwall remnant extending above the backfill material does not have to achieve the 1.3 minimum long-term static safety factor. However, the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) and require (1) that any highwall remnant be stable and not pose a hazard to the public health and safety or to the environment and (2) that an operator demonstrate to the satisfaction of the regulatory authority that the highwall remnant is stable.

Utah's proposed revisions to recodified Utah Admin. R. 645–301–553.530 to require that its stability criteria apply to any remaining highwall left in accordance with the approved State program, whether in connection with a PMA, a CMA or an area with remaining highwalls subject to Utah's AOC provisions is not inconsistent with the Federal regulations at 30 CFR 816.102(a)(3), 817.102(a)(3), 816.106(b)(3) and 817.106(b)(3).

The portion of Utah's proposed revisions to recodified Utah Admin. R. 645–301–553.530 deleting the phrase ''not to exceed either the angle of repose or such lesser slope as is necessary to,'' as previously required by 30 CFR 944.16(d), is not inconsistent with the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3).

The portion of Utah's proposed revisions at Utah Admin. R. 645–301–553. 530 that allows an operator to provide alternative stability criterion to establish that a highwall remnant or retained highwall is stable and does not pose a hazard to the public health and safety or to the environment is not inconsistent with the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3).

For the reasons discussed above, the Director approves Utah's proposed rule revisions to recodified Utah Admin. R. 645–301–553.530. The Director also finds that the proposed revisions satisfy the part of the required amendment previously codified at 30 CFR 944.16(d)(1) that applied to recodified Utah Admin. R. 645–301–553.530 and satisfy in total the required amendments previously codified at 30 CFR 944.16(d)(2) and (3).

9. Utah Admin. R. 634–301–553.600, PMA's and CMA's

Utah proposed to delete existing Utah Admin. R. 645–301–553.650 and create new Utah Admin. R. 645–301–553.600, which serves as the section title and introduction to Utah's reorganized rule requirements at Utah Admin. R. 645–301–553.610 through .612 for PMA's and CMA's (see finding Nos. 11 and 12).

The counterpart Federal regulations at 30 CFR 816.106 and 817.106 pertain to backfilling and grading requirements for PMA's. The Federal regulations at 30 CFR 816.106 and 817.106 apply only to backfilling and grading requirements for remaining operations PMA's. Utah's proposed rule differs from the Federal regulations in that Utah proposes to extend its rules concerning the backfilling and grading requirements for remaining highwalls to operations on CMA's. Although there are no Federal regulations that directly correspond to Utah's application of its rule to CMA's, the Federal regulations at 30 CFR 816.106 and 817.106, as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to this Utah provision.

Newly-created Utah Admin. R. 645–301–553.600 is consistent with Utah's proposed rule reorganization and is not inconsistent with the corresponding Federal regulations at 30 CFR 816.106 and 817.106. Accordingly, the Director approves Utah's proposed rule revision.

10. Utah Admin. R. 634–301–553.610, Exceptions for PMA's and CMA's From the Requirement for Complete Highwall Elimination

Utah proposed to revise the text of the existing provision at Utah Admin. R. 645–301–553.520 and relocate it at new Utah Admin. R. 645–301–553.610 under the newly-created section of Utah's rules at Utah Admin. R. 645–301–553.600 addressing PMA's and CMA's (see finding No. 10). Specifically, proposed Utah Admin. R. 645–301–553.610 states that highwalls on PMA's or CMA's must be eliminated to the maximum extent technically practical, but are not required to be completely eliminated where the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the reaffected or enlarged highwall.

Newly-created Utah Admin. R. 645–301–553.610, which allows an exception for PMA's and CMA's to the requirement that highwalls be completely eliminated, is consistent with the proposed reorganization of Utah's rules. In addition, because operations on both PMA's and CMA's must eliminate the highway to the maximum extent technically practical and make a written demonstration that all reasonably available spoil was used, proposed Utah Admin. R. 645–301–553.610 is not inconsistent with the Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2). For this reason, the Director approves newly-created Utah Admin. R. 645–301–553.610.

11. Utah Admin. R. 634–301–553.611 and .612, Backfilling and Grading of Reasonably Available Spoil

Utah proposed to delete existing Utah Admin. R. 645–301–553.521 and create new provisions at Utah Admin. R. 645–301–553.611 and .612 respectively, which consist of the revised text of former Utah Admin. R. 645–301–553.521. Newly-created Utah Admin. R. 645–301–553.611 requires that all spoils generated by the remining operation or CMA and any other reasonably available spoil will be used to backfill the area. Newly-created Utah Admin. R. 645–301–553.612 requires that reasonably available spoil in the immediate vicinity of the remining operation or CMA will be included within the permit area.

The Federal regulations at 30 CFR 816.106(b)(1) and 817.106(b)(1) require that all spoil generated by the remining operation on PMA's and any other reasonably available spoil will be used to backfill the area, and reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area. The Federal regulations at 30 CFR 816.106(b)(1) and 817.106(b)(1) apply only to backfilling and grading requirements for remining operations on PMA's. Utah's proposed rules differ from the Federal regulations in that Utah proposes to extend its rules concerning the requirements for backfilling and grading of reasonably

available spoil to operations with remaining highwalls on CMA's. Although there are no Federal regulations that directly correspond to Utah's application of its rules to CMA's, the Federal regulations at 30 CFR 816.106(b)(1) and 817.106(b)(1), as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to these Utah provisions.

Utah's newly-created provisions at proposed Utah Admin. R. 645–301–553.611 and .612 are in accordance with Utah's proposed rule reorganization and are not inconsistent with the Federal requirements. Accordingly, the Director approves Utah's newly-created provisions at Utah Admin. R. 645–301–553.611 and .612.

12. Utah Admin. R. 645–301–553.650, Highwall Management Under the AOC Provisions

In response to the required amendment previously codified at 30 CFR 944.16(a) (September 17, 1993, 58 FR 48600), Utah proposed to create new Utah Admin. R. 645–301–553.650 by proposing a section entitled ''Highwall Management Under the Approximate Original Contour Provisions.'' Newly-created Utah Admin. R. 645–301–553.650 requires that for situations where a permittee seeks approval for a remaining highwall under the AOC provisions, the permittee will establish and the Division will find in writing that the remaining highwall will achieve the stability and AOC requirements of certain cited applicable rules.

While there are no Federal regulations that directly correspond to newly-created Utah Admin. R. 645–301–553.650, the Federal regulations at 30 CFR 816.102(k)(3)(ii) and 817.102(k)(1) explicitly require operators to obtain the regulatory authority's approval for determinations relating to AOC. Because Utah's proposed rule at Utah Admin. R. 645–301–553.650 does explicitly require that, prior to the Division approving the retention of a highwall, the permittee will establish and the Division will find in writing that the remaining highwall will achieve the applicable stability requirements and will meet the applicable AOC criteria, it is not inconsistent with the Federal regulations at 30 CFR 816.102(k)(3)(ii) and 817.102(k)(1).

Accordingly, the Director approves newly-created Utah Admin. R. 645–301–553.650. The Director also finds that the proposed rule satisfies the required amendment previously codified at 30 CFR 944.16(a).

13. Utah Admin. R. 645–301–553.650.100, Height and Length of Remaining Highwalls

In response to the required amendment previously codified at 30 CFR 944.16(b) (September 17, 1993, 58 FR 48600), Utah proposed to revise existing Utah Admin. R. 645–301–553.651 by recodifying it as Utah Admin. R. 645–301–553.650.100 and revising it to require that a remaining highwall will not be greater in height or length than the cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations.

Beacuse proposed Utah Admin. R. 645–301–553.650.100 restricts the height and length of remaining highwalls to those cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations, it is consistent with the replacement criterion for areas with remaining highwalls subject to the AOC provisions at Utah Admin. R. 645–301–553.650.200, and is no less stringent than section 515(b)(3) of SMCRA, which requires mining operations to restore the land to AOC. In addition, Utah Admin. R. 645–301–553.650.100 is in accordance with Utah's proposed rule reorganization.

For these reasons, the Director approves proposed Utah Admin. R. 645–301–553.650.100. The Director also finds that the proposed rule satisfies the required amendment previously codified at 30 CFR 944.16(b).

14. Utah Admin. R. 645–301–553.650.200, Replacement of Preexisting Cliffs or Similar Natural Premining Features With a Remaining Highwall

Utah proposed to recodify existing Utah Admin. R. 645–301–553.652 as Utah Admin. R. 645–301–553.650.200 and revise it to require that a highwall may remain only when it replaces a preexisting cliff or similar natural premining feature and resembles the structure, composition, and function of the natural cliff it replaces.

As discussed in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48604–5), the Secretary of the Interior harmonized the inherent contradiction that exists when applying section 515(b)(3) of SMCRA, which requires operators to restore land to AOC with all highwalls eliminated, to specific areas of Utah involving natural benches and steep topography by approving a carefully limited exception in the Utah program to SMCRA's requirement for the complete elimination of all highwalls. Because proposed Utah Admin. R. 645–301–553.650.200 allows highwalls to remain only when they replace preexisting cliffs or similar natural premining features and resemble the structure, composition, and function of the natural cliffs they replace, it is in accordance with the Secretary's approval of Utah's provisions for areas with remaining highwalls subject to the AOC provisions and is no less stringent than section 515(b)(3) of SMCRA, which requires mining operations to restore the land to AOC. In addition, Utah Admin. R. 645–301–553.600.200 is consistent with Utah's proposed rule reorganization. Accordingly, the Director approves Utah's proposed rule.

15. Utah Admin. R. 645–301–553.651, Applicability Date

In response to the required amendment previously codified at 30 CFR 944.16(c) (September 17, 1993, 58 FR 48600), Utah proposed to create new Utah Admin. R. 645–301–553.651, which states the following.

> Applicability. Where final backfilling and grading was completed and the phase one bond was released prior to June 2, 1992, no redisturbance of a reclaimed highwall will be required. Highwalls which were approved under R645–301–553.652, the rule commonly referred to as the ''AOC alternative,'' after December 13, 1982 are subject to the retroactive application of current rule R645–301–552.650, providing the subject highwall has not been reclaimed and phase one bond was not released prior to June 2, 1992.

Utah incorporates by reference the provisions of Utah Admin. R. 645–301–55*2*.650. No such citation exists in Utah's rules. For the purposes of the following finding, OSM assumes that the proposed reference is a typographical error and that Utah intended to cite Utah Admin. R. 645–301–55*3*.650.*200*, which is pertinent to the proposed applicability section at Utah Admin. R. 645–301–553.651 and the required amendment previously codified at 30 CFR 944.16(c).

At Utah Admin. R. 645–301–553.651, Utah proposes that the requirements of Utah Admin. R. 645–301–553.650.200 (incorrectly cited by Utah as Utah Admin. R. 645–301–552.650) do not retroactively apply to highwalls which were retained under existing Utah Admin. R. 645–301–553.652 and for which final backfilling and grading was completed and the phase one bond was released prior to June 2, 1992.

Existing Utah Admin. R. 645–301–553.652 provides in part that a highwall may be retained if it is similar in structural composition to the preexisting cliffs ''in the surrounding area.'' As discussed in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605; finding No.

3), Utah interpreted the quoted phrase to allow the retention of highwalls when no similar natural features existed in the disturbed area prior to mining. By letter dated January 9, 1991, and sent to Utah in accordance with 30 CFR 732.17, OSM notified Utah that this interpretation was not consistent with SMCRA and the Secretary's assumptions in approving the provisions of the Utah program that allow for the incomplete elimination of highwalls for areas with remaining highwalls subject to the AOC provisions.

With respect to the June 2, 1992, date that Utah uses in proposed Utah Admin. R. 645–301–553.651, the Director, as also discussed in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605–6; finding No. 3(C)(3)(b)), found that an applicability date of December 13, 1982, rather than June 2, 1992, is mandated by SMCRA. In that discussion, the Director made clear that the replacement criterion, now codified at Utah Admin. R. 645–301–553.650.200, has an applicability date of December 13, 1982, and *must* apply to *any* highwall retained pursuant to the AOC provisions of the Utah program at Utah Admin. R. 645–301–553.650 regardless of the date that the highwall was created.

For these reasons, the Director finds that proposed Utah Admin. R. 645–301–553.651 is less stringent than section 515 of SMCRA, not in accordance with the Secretary's assumptions in approving the provisions of the Utah program that allow for the incomplete elimination of highwalls for areas with remaining highwalls subject to the AOC provisions, and not in accordance with the Director's previous finding in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605–6; finding No. 3(C)(3)(b)). Therefore, the Director does not approve Utah's proposed rule at Utah Admin. R. 645–301–553.651. In addition, the Director will continue to interpret the replacement criterion at Utah Admin. R. 645–301–553.650.200 as having an applicability date of December 13, 1982, and as applying to any highwall retained pursuant to the AOC provisions of the Utah program at Utah Admin. R. 645–301–553.650. The Director is not requiring Utah, as was done previously at 30 CFR 944.16(c), to revise its rules to require that the replacement criterion provision at Utah Admin. R. 645–301–553.650.200 has an applicability date of December 13, 1982, and applies to any highwall retained pursuant to the AOC provisions of the Utah program. OSM has decided that it is not necessary to require Utah to so revise its rules because OSM has already made clear, in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605–6; finding No. 3(C)(3)(b)), and again in this finding, that the Director will interpret the Utah replacement criterion at Utah Admin. R. 645–301–553.650.200 as having an applicability date of December 13, 1982, and as applying to any highwall retained pursuant to the AOC provisions of the Utah program at Utah Admin. R. 645–301–553.650. OSM will utilize this interpretation of the replacement criterion at Utah Admin. R. 645–301–553.650.200 in its oversight of the Utah program, regardless of whether or not Utah's program explicitly addresses the applicability of the replacement criterion.

IV. Summary and Disposition of Comments

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

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program.

The U.S. Army Corps of Engineers responded on December 15, 1993, and August 1 and December 9, 1994, that the changes to the Utah program were satisfactory (administrative record Nos. UT–884, UT–958, and UT–998).

The U.S. Fish and Wildlife Service responded on December 16, 1993, that it found nothing of significant concern and on August 9, 1994, that it had no further comments (administrative record Nos. UT–885 and UT–961).

The U.S. Forest Service (USFS) responded on December 27, 1993, that ''the State of Utah uses a safety factor of 1.3 for long-term stability of highwalls whereas the Forest Service requires a safety factor of 1.5'' (administrative record No. UT–886).

Utah Admin. R. 645–301–553.130, in pertinent part, requires that disturbed areas will be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a long-term static safety factor of 1.3 and prevent slides. In addition, Utah Admin. R. 645–301–553.530 requires, in pertinent part, that a Utah operator will demonstrate, to the satisfaction of the Division, that a remaining highwall must achieve a minimum long-term static safety factor of 1.3 and prevent slides.

As discussed in finding No. 8, the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require that disturbed areas shall be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a long-term static safety factor of 1.3 and prevent slides. Therefore, Utah's use of a 1.3 static safety factor for long-term stability of highwalls is ''in accordance with and no less effective than'' the Federal backfilling and grading standards set forth in title 30 of the Code of Federal Regulations. Because the Federal regulations at 30 CFR 730.5(b) only require that a State's laws be ''in accordance with'' and ''no less effective than'' the Federal regulations in meeting the requirements of SMCRA, the Director does not have the authority to require standards in excess of the Federal regulations that implement SMCRA. One this basis, the Director does not require Utah to revise its program in response to USFS's comment. However, if USFS has a 1.5 static safety factor that applies to highwalls on land under USFS's jurisdiction, this does not preclude USFS from enforcing this standard on such highwalls.

The Mine Safety and Health Administration responded on June 20, 1994, and January 12, 1995, that the proposed amendment did not appear to conflict with the requirements of 30 CFR, which includes its safety regulations (administrative record Nos. UT–940 and UT–1006).

The U.S. Bureau of Mines responded on July 18 and December 6, 1994, by telephone conversation, that it had no comments on the proposed amendment (administrative record Nos. UT–948 and UT–995).

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 program amendment 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 Nos. UT–876, UT–946, and UT–993). It responded on December 9, 1993, July 19, 1994, and December 22, 1994, that it had no comments on the proposed amendment and did not believe that there would be any impacts to water quality standards promulgated under the Clean Water Act (administrative record Nos. UT–880, UT–954, and UT–1000).

4. State Historic Preservation Officer (SHPO)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO (administrative record Nos. UT–876, UT–946, and UT–993). the SHPO did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with an exception and additional requirements, Utah's proposed amendment as submitted on November 12, 1993, and as revised on June 28 and November 3, 1994.

The Director does not approve, as discussed in: finding No. 15, Utah Admin. R. 645–301–553.651, concerning the applicability date of Utah's replacement criterion for areas with remaining highwalls subject to the AOC provisions at Utah Admin. R. 645–301–553.650.200.

The Director approves, as discussed in: finding No. 1, Utah Admin. R. 645–301–553, concerning contemporaneous reclamation requirements for backfilling and grading; Utah Admin. R. 645–301–553.130, concerning the requirements for a 1.3 static safety factor; Utah Admin. R. 645–301–553.150, concerning the requirements for post mining land use; Utah Admin. R. 645–301–553.200, concerning the backfilling and grading requirements for spoil and waste; Utah Admin. R. 645–301–553.210, concerning the general requirements for disposal of excess spoil; Utah Admin. R. 645–301–553.220, concerning the requirements for placement of spoil; Utah Admin. R. 645–301–553.252, concerning the requirements for final grading of refuse piles and coal mine waste; Utah Admin. R. 645–301–553.300, concerning the requirements for covering of exposed coal seams; Utah Admin. R. 645–301–553.510, concerning remaining operations on PMA's, operations on CMA's, and operations on areas with remaining highwalls subject to AOC provisions; Utah Admin. R. 645–301–553.540, concerning the requirements for spoil placement; Utah Admin. R. 645–301–553.650.300, concerning the requirement for modifications to retained highwalls restoring cliff-type habitats required by premining flora and fauna; Utah Admin. R. 645–301–553.650.400, concerning the requirement for compatibility of retained highwalls with the approved postmining land use and visual attributes of the area; and Utah Admin. R. 645–301–553.650.500, concerning the exemption from obtaining a variance from AOC requirements; finding No. 2, Utah Admin. R. 645–301–553.100, concerning the section entitled ''disturbed areas,'' and Utah Admin. R. 645–301–553.230, concerning the general requirements for backfilling and grading; finding No. 3, Utah Admin. R. 645–100–200, concerning the definition of ''Continuously Mined Areas;'' finding No. 6, Utah Admin. R. 645–301–553.500, concerning PMA's, CMA's, and areas with remaining highwalls subject to AOC provisions; finding No. 7, Utah Admin. R. 634–301–553.520, concerning backfilling and grading of remaining highwalls; finding No. 8, Utah Admin. R. 645–301–553.530, concerning stability criteria for backfilling and grading and resulting in partial removal of the required amendment previously codified at 30 CFR 944.16(d)(1) and total removal of the required amendments previously codified at 30 CFR 944.16(d) (2) and (3); finding No. 9, Utah Admin. R. 634–301–553.600, concerning Utah's newly-created section title for its reorganized rule requirements for PMA's and CMA's; finding No. 10, Utah Admin. R. 634–301–553.610, concerning exceptions for PMA's and CMA's from the requirement for complete highwall elimination; finding No. 11, Utah Admin. R. 634–301–553.611 and .612, concerning backfilling and grading of reasonably available spoil; finding No. 12, Utah Admin. R. 645–301–553.650, concerning highwall management under the AOC provisions and removal of the required amendment previously codified at 30 CFR 944.16(a); finding No. 13, Utah Admin. R. 645–301–553.650.100, concerning the height and length of remaining highwalls and removal of the required amendment previously codified at 30 CFR 944.16(b); and finding No. 14, Utah Admin. R. 645–301–553.650.200, concerning the replacement of preexisting cliffs or similar natural premining features with a remaining highwall.

With the requirement that Utah further revise its rules, the Director approves, as discussed in: finding No. 4, Utah Admin. R. 645–301–553.110, concerning exceptions to the requirement that disturbed areas achieve AOC; and finding No. 5, Utah Admin. R. 534–301–553.120, concerning backfilling and grading of spoil and waste.

The Director approves, with one exception, the rules as proposed by Utah with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

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

Effect of Director'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 alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Utah program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Utah of only such provisions.

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 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and had 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 since each such 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.

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)).

4. Paperwork Reduction Act

The 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 with 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.

VII. List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 23, 1995.

Richard J. Seibel,

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 by adding paragraph (ee) to read as follows:

§ 944.15 Approval of amendments to the Utah regulatory program.

* * * * *

(ee) With the exception of Utah Admin. R. 645–301–553.651, concerning the applicability date of Utah's replacement criterion for areas with remaining highwalls subject to the AOC provisions at Utah Admin. R. 645–301–553.650.200 (formerly the ''AOC alternative''), the following rules, as submitted to OSM on November 12, 1993, and as revised on June 28 and November 3, 1994, are approved effective May 30, 1995.

645–100–200	Definition of ''Continuously Mined Areas'' (CMA's).
645–301–553	Contemporaneous Reclamation Requirements for Backfilling and Grading.
645–301–553.100	Section Entitled ''Disturbed Areas.''
645–301–553.110	Exceptions to the Requirement That Disturbed Areas Achieve Approximate Original Contour (AOC).
645–301–553.120	Backfilling and Grading of Spoil and Waste.
645–301–553.130	Requirements for a 1.3 Static Safety Factor.
645–301–553.150	Requirements for Postmining Land Use.
645–301–553.200	Backfilling and Grading Requirements for Spoil and Waste.
645–301–553.210	General Requirements for Disposal of Excess Spoil.
645–301–553.220	Requirements for Placement of Spoil.
645–301–553.230	General Requirements for Backfilling and Grading.
645–301–553.252	Final Grading of Refuse Piles and Coal Mine Waste.
645–301–553.300	Covering of Exposed Coal Seams.
645–301–553.500	Previously Mined Area's (PMA's), CMA's, and Areas With Remaining Highwalls Subject to AOC Provisions.
645–301–553.510	Remining Operations on PMA's, Operations on CMA's, and Operations on Areas With Remaining Highwalls Subject to AOC Provisions.
645–301–553.520	Backfilling and Grading of Remaining Highwalls.
645–301–553.530	Stability Criteria for Backfilling and Grading.
645–301–553.540	Spoil Placement.
645–301–553.600	Newly-Created Section Title for Utah's Reorganized Rule Requirements for PMA's and CMA's.
645–301–553.610	Exceptions for PMA's and CMA's From the Requirement for Complete Highwall Elimination.
645–301–553.611 and .612	Backfilling and Grading of Reasonably Available Spoil.
645–301–553.650	Highwall Management Under the AOC Provisions.
645–301–553.650.100	Height and Length Requirements of Remaining Highwalls.
645–301–553.650.200	Replacement of Preexisting Cliffs or Similar Natural Premining Features With a Remaining Highwall.
645–301–553.650.300	Modifications to Retained Highwalls Restoring Cliff-Type Habitats Required by Premining Flora and Fauna.
645–301–553.650.400	Compatibility of Retained Highwalls With the Approved Postmining Land Use and Visual Attributes of the Area.
645–301–553.650.500	Exemption from Obtaining a Variance From AOC Requirements.

3. Section 944.16 is amended by adding paragraphs (c) and (d) to read as follows:

§ 944.16 Required program amendments.

* * * * *

(c) By July 31, 1995, Utah shall revise Utah Admin. R. 645–301–553.110, or otherwise modify its program, by correcting the cross-referenced provisions in the phrase ''R645–301–500 through R645–301–540,'' regarding previously mined area's continuously mined area's, and areas subject to the AOC provisions, to read ''R645–301–553.500 through R645–301–553.540.''

(d) By July 31, 1995, Utah shall revise Utah Admin. R. 645–301–553–120, or otherwise modify its program, by correcting the cross-referenced provisions in the phrase ''R645–301–553.500 through R645–301–540,'' regarding previously mined area's, continuously mined area's, and areas

subject to the AOC provisions, to read ''R645–301–553.500 through R645–301–553.540'' and correcting the cross-referenced provisions in the phrase ''R645–301–553.650 through R645–301–553.653'' to read ''R645–301–553.650 through R645–301–553.651.''

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 216

Military Recruiting at Institutions of Higher Education

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: The Department of Defense adopts this interim rule to implement the ''National Defense Authorization Act for Fiscal Year 1995. It updates policy, procedures, and responsibilities for identifying and taking action against any institution of higher education that has a policy of denying, or, that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: Entry to campuses, access to students on campuses, or access to student directory information. No funds available to the Department of Defense (DoD) may be provided by grant or contract to any such institution. The new law allows no basis for waivers.

DATES: This interim rule is effective on May 30, 1995. Written comments on this rule must be received by July 31, 1995.

ADDRESSES: Forward comments to the Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Ronald G. Liveris, (703) 697–9268.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is not a ''significant regulatory action,'' as defined by Executive Order 12866. The Department of Defense believes that it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising our of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This interim rule will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act of 1980 (44 U.S.C., Chapter 35)

This interim rule will not impose any additional reporting or record keeping requirements under the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 216

Armed Forces, Colleges and universities, Recruiting personnel.

Accordingly, 32 CFR part 216 is revised to read as follows:

PART 216—MILITARY RECRUITING AT INSTITUTIONS OF HIGHER EDUCATION

Sec.
216.1 Purpose.
216.2 Applicability.
216.3 Definitions.
216.4 Responsibility.

Appendix A to part 216—Sample Letter of Inquiry

Authority: 10 U.S.C. 503 note.

§ 216.1 Purpose.

This part implements section 558, The National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103–337 (See 10 U.S.C. section 503 note). It updates policy and responsibilities for identifying and taking action regarding institutions of higher education that either have a policy of denying or effectively bar military recruiting personnel from entry to their campuses, or from access to student directory information.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified and Specified Combatant Commands, the Uniformed Services University of Health Sciences (USUHS), the Defense Agencies, and DoD Field Activities (hereafter referred to collectively as ''the DoD Components''). The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 216.3 Definitions.

(a) *Directory information.* Referring to a student means the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by student.

(b) *Institution of higher education.* A domestic college, university, or sub-element of a university providing post-secondary school courses of study, including foreign campuses of such institutions. This includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term ''institution of higher education'' does not include entities that operate exclusively outside the United States, its territories, and possessions.

(c) *Student.* An individual who is 17 years of age or older and enrolled in an institution of higher education.

§ 216.4 Policy.

(a) Under section 558 of the National Defense Authorization Act for Fiscal Year 1995, no funds available to the Department of Defense (DoD) may be provided by grant or contract to any institution of higher education that either has a policy of denying or that effectively prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses or access to students on campuses or access to directory information pertaining to students. This prohibition on use of DoD funds applies only to sub-elements of an institution of higher education that are determined to have such a policy or practice.

(b) An evaluation to determine whether an institution of higher education has a policy of denying, or is effectively preventing, the Secretary of Defense from obtaining entry to the campuses, access to students on campuses, or access to student directory information shall be undertaken when:

(1) Military recruiting personnel cannot obtain permission to recruit on the premises of the institution or when they are refused directory information. Military recruiting personnel shall accommodate an institution's reasonable preferences as to times and places for scheduling on-campus recruiting, provided that any such restrictions are not based on the policies or practices of the Department of Defense and the Military Services are provided entry to the campus and access to students on campus and directory information; or

(2) The institution is unwilling to declare in writing as a prerequisite to an