the administration and management of Montana's reclamation program.

As discussed in finding No. 3, the Director approves the policies and procedures concerning consultation and coordination by the designated agency in administering Montana's AMLR program.

As discussed in finding No. 4, the Director approves Exhibits B, C, and D as additions to Montana's AMLR Plan.

The Director approves the proposed revisions of the Montana plan with the provision that they be fully promulgated in identical form to the plan amendment submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 926, codifying decisions concerning the Montana plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VII. 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 has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or 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 in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 13, 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 926—MONTANA

1. The authority citation for Part 926 continues to read as follows:

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

2. Section 926.20 is revised to read as follows:

§ 926.20 Approval of Montana Abandoned Mine Land Reclamation Plan.

The Montana Abandoned Mine Land Reclamation Plan, as submitted on June 16, 1980, and as revised on July 28, 1980, is approved effective November 24, 1980. Copies of the approved plan are available at:

(a) Montana Department of Environmental Quality, 1625 Eleventh Avenue, Helena, MT 59620–1601.

(b) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601–1918.

3. Section 926.25 is added to read as follows:

§ 926.25 Approval of abandoned mine land reclamation plan amendments.

(a) The Montana AMLR Plan amendment, as submitted to OSM on April 20, 1983, and as revised on June 15, 1983, is approved effective September 19, 1983.

(b) Certification by Montana of completion of all known coal-related impacts, as submitted to OSM on December 27, 1989, is accepted effective July 9, 1990.

(c) The Montana AMLR Plan amendment, as submitted to OSM on March 22 and April 5, 1995, is approved effective July 19, 1995.

[FR Doc. 95–17715 Filed 7–18–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Regulatory Program and Utah Abandoned Mine Land Reclamation (AMLR) Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with additional requirements, a proposed amendment to the Utah regulatory program and Utah AMLR plan (hereinafter referred to as the ''Utah program'' and the ''Utah plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed revisions to the Utah Coal Mining and Reclamation Act of 1979. The revisions to the Utah program concern definitions of new terms; rulemaking authority and procedures; administrative procedures; Division of Oil, Gas and Mining (Division) action on permit applications; informal conferences; appeals and further review; release of performance bonds; revegetation standards on lands eligible for remining; operator requirements for underground coal mining; contest of violation or amount of penalty; violations of Utah's program or permit conditions; judicial review of rules and orders; repeal of specific sections of the Utah Code Annotated 1953; and repeal dates of certain provisions of the Utah program. The revisions to the Utah plan concern lands and water eligible for reclamation, recovery of reclamation costs, and liens against reclaimed lands. The amendment is intended to revise the Utah program to be consistent with the

Utah Administrative Procedures Act, and to revise the Utah program and Utah plan to be consistent with SMCRA, and improve operational efficiency.

EFFECTIVE DATE: July 19, 1995.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program and the Utah Plan

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

II. Proposed Amendment

By letter dated April 14, 1994, Utah submitted a proposed amendment to its program and plan pursuant to SMCRA (administrative record No. UT–917). The amendment consists of proposed revisions to the Utah Coal Mining and Reclamation Act of 1979. Utah submitted the proposed amendment in part to make its program and plan consistent with SMCRA and in part at its own initiative to make its program consistent with the Utah Administrative Procedures Act, thereby improving operational efficiency.

The Utah program provisions of the Utah Coal Mining and Reclamation Act of 1979 that Utah proposed to revise were: Utah Code Annotated (UCA) 40–10–2, purpose of Chapter 10; (2) UCA 40–10–3, definitions of new terms ''adjudicative proceeding,'' ''lands eligible for remining,'' and ''unanticipated event or condition;'' (3) UCA 40–10–6.5, rulemaking authority and procedure; (4) UCA 40–10–6.7, administrative procedures; (5) UCA 40–10–7, prohibition of financial interest in any coal mining operation; (6) UCA 40–10–8, coal exploration rules issued by the Division and penalty for violation; (7) UCA 40–10–10, permit applications; (8) UCA 40–10–11, Division action on the permit application; (9) UCA 40–10–12, revision or modification of permit provisions; (10) UCA 40–10–13, informal conferences; (11) UCA 40–10–14, permit approval or disapproval, appeals, and further review; (12) UCA 40–10–15, performance bonds; (13) UCA 40–10–16, release of performance bond, surety, or deposit; (14) UCA 40–10–17, revegetation standards on lands eligible for remining; (15) UCA 40–10–18, operator requirements for underground coal mining; (16) UCA 40–10–19, information provided by the permittee to the Division and right of entry; (17) UCA 40–10–20, contest of violation or amount of penalty; (18) UCA 40–10–21, civil action to compel compliance with Utah's program and other rights not affected; (19) UCA 40–10–22, violations of Utah's program or permit conditions; (20) UCA 40–10–24, determination of unsuitability of lands for surface coal mining; and (21) UCA 40–10–30, judicial review of rules or orders. Utah also proposed to repeal UCA 40–10–4, ''Mined land reclamation provisions applied,'' and UCA 40–10–31, ''Chapter's procedures supersede Title 63, Chapter 46b.'' Finally, Utah proposed to repeal UCA 40–10–11(5), modification of permit issuance prohibition, and UCA 40–10–17(2)(t)(ii), revegetation standards on lands eligible for remining, effective September 30, 2004.

The Utah plan provisions of the Utah Coal Mining and Reclamation Act of 1979 that Utah proposed to revise were: (1) UCA 40–10–25, lands and water eligible for reclamation; (2) UCA 40–10–27, entry upon land adversely affected by past coal mining practices, State acquisition of land and public sale, and water pollution control and treatment plants; and (3) UCA 40–10–28, recovery of reclamation costs and liens against reclaimed land.

OSM announced receipt of the proposed amendment in the May 12, 1994, **Federal Register** (59 FR 24675), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–926). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 13, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of the Utah Coal Mining and Reclamation Act of 1979 at UCA 40–10–3(1), definition of ''adjudicative proceeding;'' UCA 40–10–4, applicability of provisions of UCA 40–8; UCA 40–10–6.7 and Utah Administrative Rule (Utah Admin. R.) 641–100–100, administrative procedures; UCA 40–10–11(3) schedule of applicant's mining law violations; UCA 40–10–11(5), remining operation violations resulting from unanticipated events or conditions; UCA 40–1013(2)(b), location of informal conferences; UCA 40–1014(6)(c), appeal to district court and further review; UCA 40–10–16(6), information conference or formal hearings concerning performance bond release decisions; UCA 40–10–18(4), damage resulting from underground coal mining subsidence; UCA 40–10–20(2)(e), contest of a violation or amount of a civil penalty; UCA 40–10–22(2)(b), cessation order, abatement notice or show cause order; UCA 40–10–22(3)(e), costs assessed against the permittee or any person having an interest that is or may be adversely affected by the notice or order of the Board of Oil, Gas and Mining (Board); and UCA 40–10–28 (1)(b) and (2)(b), recovery of reclamation costs and liens against reclaimed land. OSM notified Utah of the concerns by letter dated October 24, 1994 (administrative record No. UT–980).

Utah responded in a letter dated December 7, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. UT–997). Utah proposed revisions to its Rules of Practice and Procedure of the Board at Utah Admin. R. 641–100–100, administrative procedures. Utah also proposed revisions to and additional explanatory information for UCA 40–10–14(6), appeal to district court and further review, UCA 40–10–4, mined land reclamation provisions applied, UCA 40–10–16(6), formal hearings or informal conferences, and UCA 40–10–22(2)(b), cessation orders, abatement notices, or show cause orders.

Based upon the revisions to and additional explanatory information for the proposed program and plan amendment submitted by Utah, OSM reopened the public comment period in the December 15, 1994, **Federal Register** (59 FR 64636, administrative record No. UT–1002). The public comment period ended on December 30, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with additional requirements, that the proposed program and plan amendment submitted by Utah on April 14, 1994, and as revised by it and supplemented with additional explanatory information on December 7, 1994, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Utah's Statutes

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

UCA 40–10–2 (1) through (6), purpose (section 102 of SMCRA),

UCA 40–10–3 (2) through (7), (9) through (20), and (22), recodification of definitions for the terms ''alluvial valley floors,'' ''approximate original contour,'' ''Board,'' ''Division,'' ''imminent danger to the health and safety of the public,'' ''employee,'' ''operator,'' ''other minerals,'' ''permit,'' ''permit applicant,'' or ''applicant,'' ''permitting agency,'' ''permit area,'' ''permittee,'' ''person,'' ''prime farmland,'' ''reclamation plan,'' ''surface coal mining and reclamation operations,'' ''surface coal mining operations,'' and ''unwarranted failure to comply'' (sections 701 (1), (2), (8), (13) through (21), (28), (29), and (33) of SMCRA),

UCA 40–10–6.5 (2) and (3) [recodification], rulemaking procedures (section 505 of SMCRA),

UCA 40–10–7(1), prohibited financial interest in mining operations (section 201(f) of SMCRA),

UCA 40–10–8 (1) and (3), exploration rules issued by Division and penalty for violation (section 512 of SMCRA),

UCA 40–10–10(2), submission of application and reclamation plan (section 507 of SMCRA),

UCA 40–10–11 (1), (2) (a) through (d), (e)(ii), (f) (i) and (iii); and (4) (a) and (b), Division action on permit application, requirements for approval, and restoration of prime farmland (section 510 of SMCRA),

UCA 40–10–12(3), revision or modification of permit provisions (section 511(c) of SMCRA),

UCA 40–10–14 (2) and (3), notice to the applicant of approval or disapproval of the application and hearings (section 514 of SMCRA),

UCA 40–10–15(1), performance bonds (section 509(a) of SMCRA),

UCA 40–10–16(1), (3), and (6)(a), release of performance bond, surety, or deposit; action on application for relief of bond; and formal hearings or informal conferences (section 519 of SMCRA),

UCA 40–10–17(2)(g); (2)(j) (i)(B) and (ii) (A) and (B); (2)(m); (2)(o) and (o) (i), (iv), and (v); (2)(p) (i)(F), (ii), and (iii); (2)(t)(i); (2)(v)(viii); (3)(b) and (b)(ii); (3)(c); (4) (a) and (d); and (5), performance standards for all coal mining and reclamation operations, additional standards for steep-slope surface coal mining, and variances (section 515 of SMCRA),

UCA 40–10–18(1), (2)(i)(i)(B), (2)(j), and (5), underground coal mining, rules regarding surface effects, operator requirements for underground coal mining, and applicability of other chapter provisions (section 516 of SMCRA),

UCA 40–10–19(1) and (2)(a), information provided by the permittee to the Division and inspections by the Division (sections (517(b) and (b)(3) of SMCRA),

UCA 40–10–21(1)(a)(i) and (ii), (2)(a)(ii), and (5), civil action to compel compliance with chapter, jurisdiction, and other rights not affected (section 520 of SMCRA),

UCA 40–10–22 (1)(c) and (2)(a)(i), violation of chapter or permit conditions and inspections (section 521 of SMCRA),

UCA 40–10–24(1)(c) (i) (A), (B), (C), and (D), and (ii); (e) (i), (ii), and (iii); and (2) (a) and (b), determination of unsuitability of lands for surface coal mining, petitions, and public hearings (section 522 of SMCRA),

UCA 40–10–25(2) (d) and (e) [recodification] and (3) and (3)(a), AMLR program, expenditure priorities, and eligible lands and water (sections 402(g)(4), 403, and 404 of SMCRA), and

UCA 40–10–27 (5)(a) and (12)(b), entry upon land adversely affected by past coal mining practices and State acquisition of lands (sections 407(g) and 413 of SMCRA).

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

2. Substantive Revisions to Utah's Statutes That Are Substantively Identical to the Corresponding Provision of SMCRA

Utah proposed revisions to the following statutes that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding SMCRA provisions (listed in parentheses).

UCA 40–10–3 (8) and (21), definitions for the terms ''lands eligible for remining'' and ''unanticipated event or condition'' (sections 701 (33) and (34) of SMCRA),

UCA 40–10–11(5) (b), and (c), Division action on permit application and requirements for approval (section 510(e) of SMCRA),

UCA 40–10–17(2)(t)(ii), performance standards for lands eligible for remining (section 515(b)(20)(B) of SMCRA),

UCA 40–10–22(1) (d), and (3) (a), (b), (d), and (f), violations of chapter or permit conditions; cessation orders, abatement notices, or show cause orders; suspension or revocation of permits; and reviews (sections 521(a)(4) and 525 (a)(1) and (a)(2) and (d) of SMCRA), and

UCA 40–10–25(2)(d) [deletion], 3(b), (4), (5), and (6), AMLR program and eligible lands and water (section 402(g)(4) of SMCRA).

Because these proposed Utah statutes are substantively identical to the corresponding provisions of SMCRA, the Director finds that they are no less stringent than SMCRA. The Director approves these proposed statute provisions.

3. UCA 40–10–3(1), Definition of ''Adjudicative Proceeding''

Utah proposed at UCA 40–10–3(1) a definition for the term ''adjudicative proceeding'' to mean ''a division or board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license.'' This definition is similar to the definitions of the same term at existing UCA 63–46b–2(1)(a) as described at UCA 63–46b–1 of the Utah Administrative Procedures Act (UAPA) and Utah Admin. R. 641–100–200 of the Rules of Practice and Procedure of the Board, except that the proposed definition at UCA 40–10–3(1) does not contain the phrase ''and judicial review of all such actions.''

The term ''adjudicative proceeding'' is not specifically defined in the provisions of SMCRA or the Federal regulations at 30 CFR Chapter VII. Although there is no counterpart definition of ''adjudicative proceeding'' in SMCRA or the implementing Federal regulations, section 526(e) of SMCRA provides, in part, that ''[a]ction of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law * * *.''

UCA 40–10–30, which is Utah's counterpart to 526(e) of SMCRA, establishes requirements for judicial review of any ''rule or order of the Board.'' However, the proposed definition at UCA 40–10–3(1) of ''adjudicative proceeding'' does not reference the judicial review provision at UCA 40–10–30(1), and by not specifically providing for ''judicial review of all such actions'' in the proposed definition, the implication is that judicial review is not included in ''adjudicative proceedings.'' The inconsistency between definitions of the same term within provisions of the Utah regulatory program and the lack of consistency between the provisions of UCA 40–10–3(1) and 40–10–30 were pointed out to Utah by OSM in its October 24, 1994, issue letter (issue No. 1). In order to be consistent with its own provisions at UCA 40–10–30(1), which do require judicial review of adjudicative proceedings, and with its other existing definitions of ''adjudicative proceedings'' at UCA 63–46b–2(1)(a), which is further clarified at UCA 63–46b–1, and Utah Admin. R. 641–100–200, Utah, in its December 7, 1994, response to OSM's issue letter,

stated that it would pursue the inclusion of judicial review in its definition of ''adjudicative proceeding'' at UCA 40–10–3(1) during its 1996 legislative session.

Therefore, the Director finds that Utah's proposed definition of ''adjudicative proceeding'' at UCA 40–10–3(1), while not inconsistent with the provisions of SMCRA because there is no Federal counterpart definition for this term, is inconsistent with the definition of the same term elsewhere at UCA 63–46b–2(1)(a), as clarified at UCA 63–46b–1, of the UAPA, and the implementing rules at Utah Admin. R. 641–100–200. With the requirement that Utah further revise its definition of ''adjudicative proceeding'' at UCA 40–10–3(1) to include judicial review of agency actions, the Director is approving Utah's proposed definition of ''adjudicative proceeding'' at UCA 40–10–3(1).

4. Repeal of UCA 40–10–4, Applicability of Provisions of UCA 40–8

Utah proposed to repeal its provisions at UCA 40–10–4, which concern the applicability of provisions of Title 40, Chapter 8 and its implementing rules at Utah Admin. R. Part 647 to the State's coal mining and reclamation operations. UCA 40–8 and Utah Admin. R. Part 647 pertain to the Utah Mined Land Reclamation Act and contain general reclamation standards for mining, principally for hard rock mining. There are no Federal SMCRA to either UCA 40–10–4 or 40–8.

The repeal of UCA 40–10–4 would appear to eliminate any applicability of the provisions of UCA 40–8 and Utah Admin. R. Part 647 to the Utah program. OSM notes, however, that UCA 40–10–6, which is not proposed for revision in this amendment, also references UCA 40–8. The language at UCA 40–10–6 provides that the Board and Division have powers, functions, and duties in addition to those provided in Title 40, Chapter 8, and that employees, agents, and contractors are authorized by the Board and Division to enter upon any property for the purpose of carrying out the provisions of Chapter 10 and Chapter 8, Title 40.

OSM, in its October 24, 1994, issue letter (issue No. 2), asked Utah to clarify whether the Board and Division derived some or all of their powers, functions, or duties necessary for the administration of Utah's coal program from provisions contained in UCA 40–8. Utah stated in its December 7, 1994, response to this issue that UCA 40–10–4 was proposed for deletion from the Utah Coal Mining and Reclamation Act in order to remove ambiguity from Utah's statute to clarify which, if any, of the UCA 40–8 provisions would apply to the State's coal regulatory program. Utah clarified further that the reference to UCA 40–8 at UCA 40–10–6 stems from the legislative branch awarding more powers in 1979 to the Board and Division and that such reference is only for historical purposes. Utah also stated that should there be provisions of UCA 40–8 or 40–6 which are discovered to apply to coal or which, when changed, would impact Utah's coal regulatory program, these provisions would be included in a program amendment.

Based upon the explanation provided by Utah and the State's assurance that the Board and Division do not derive powers needed to implement Utah's coal regulatory program from UCA 40–8, the Director finds that the deletion of the UCA 40–10–4 from the Coal Mining and Reclamation Act of 1979 is not inconsistent with SMCRA and approves the deletion of this statutory provision.

5. UCA 40–10–6.5 (1) and (3), Rulemaking Authority and Deletion of Administrative Procedures

Utah proposed the addition of new language at UCA 40–10–6.5(1) to provide that ''[t]he board shall promulgate rules under this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act [UARA].'' OSM, in the January 21, 1981, **Federal Register** (46 FR 5899), approved UARA provisions that were incorporated by Utah into its program as part of its original program submittal.

Section 503(a)(7) of SMCRA provides, in part, that ''[e]ach state * * * shall submit to the Secretary, * * * a State program which demonstrates that such State has the capability of carrying out the provisions of this Act and meeting its purposes through * * * rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.''

The Director finds that the proposed addition at UCA 40–10–6.5(1) is not inconsistent with section 503(a)(7) of SMCRA and the Director approves the proposed addition of this statute.

In addition, Utah proposed to delete UCA 40–10–6.5(3) in its entirety. Existing UCA 40–10–6.5(3) provides that:

> [h]earings under this chapter shall be conducted in a manner which guarantees the parties' due process rights. This includes, but is not limited to, the right to examine any evidence presented to the [hearing] committee, the right to cross-examine any witness, and a prohibition of ex parte communication between any party and a member of the board.

Utah proposed at UCA 40–10–6.7(2)(b) the addition of similar provisions to those proposed for deletion (see finding No. 6). The Director finds that, with the proposed addition of similar language at UCA 40–10–6.7(2)(b), the deletion of UCA 40–10–6.5(3) is not inconsistent with SMCRA. The Director approves the deletion of this statute.

6. UCA 40–10–6.7 and Utah Admin. R. 641–100–100, Administrative Procedures

Utah proposed new administrative procedures at UCA 40–10–6.7 to provide:

> (1)(a) Informal adjudicative proceedings shall be conducted by the division under this chapter and shall be referred to as conferences or informal conferences.
>
> (b) The conduct of conferences shall be governed by rules adopted by the board which are in accordance with Title 63, Chapter 46b, Administrative Procedures Act [UAPA].
>
> (2)(a)(i) Formal adjudicative proceedings shall be conducted by the division or board under this chapter and shall be referred to as hearings or public hearings.
>
> (ii) The conduct of hearings shall be governed by rules adopted by the board which are in accordance with Title 63, Chapter 46b, Administrative Procedures Act [UAPA].
>
> (b) Hearings under this chapter shall be conducted in a manner which guarantees the parties' due process rights. This includes:
>
> (i) the right to examine any evidence presented to the board;
>
> (ii) the right to cross-examine any witness; and
>
> (iii) a prohibition of ex parte communication between any party and a member of the board.
>
> (c) A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the board.

Although not explicitly stated in this provision, the Utah Admin. R. Parts 645 and 641 rules respectively apply to informal and formal adjudicative proceedings and provide clear direction on how formal and informal hearings are to be conducted. There are no specific counterpart provisions in SMCRA, however, as discussed in finding No. 5 above, Utah's proposed deletion of UCA 40–10–6.5(3) in its entirety and the addition of the deleted provisions at UCA 40–10–6.7(2)(b) and (b)(i), (ii), and (iii) provides hearing requirements that are not inconsistent with SMCRA and its implementing Federal regulations.

Utah, in this amendment, also proposed a revision to its Rules of Practice and Procedure of the Board at Utah Admin. R. 641–100–100 to add the phrase ''the Coal Program Rules'' in the

sentence ''[t]he rules for informal adjudicative proceedings are in the Coal Program Rules, the Oil and Gas Conservation Rules and the Mineral Rules.'' OSM previously approved the informal proceeding provisions of Utah Admin. R. 645 and formal proceeding provisions of Utah Admin. R. 641.

The Director finds that the addition of new administrative procedures at UCA 40–10–6.7 is not inconsistent with SMCRA. OSM wishes to clarify that any future rules implemented by Utah in accordance with UAPA must be revised and determined to be consistent with SMCRA. In addition, the Director finds that the proposed revision at Utah Admin. R. 641–100–100 referencing Utah's coal mining rules at Utah Admin. R. Part 645 is not inconsistent with SMCRA. Therefore, the Director approves the addition of UCA 40–10–6.7 and the revision of Utah Admin. R. 641–100–100.

7. UCA 40–10–11(3), Schedule of Applicant's Mining Law Violations and Pattern of Violations Determination

Utah proposed to revise UCA 40–10–11(3) to provide, in part:

> [t]he applicant shall file with his permit application a schedule listing any and all notices of violations of this chapter, any state or federal program or law approved under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., and any law, rule, or regulation of the United States, State of Utah, or any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. * * * no permit shall be issued to an applicant after a finding by the board * * * that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of *this chapter* of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of *this chapter.*

Emphasis added. As used by Utah in UCA 40–10–11(3), ''this chapter'' means UCA Title 40, Chapter 10.

Section 510(c) of SMCRA provides, in part, that (1) the applicant shall file with the permit application a schedule listing any and all notices of violations of, among other things, ''this Act;'' and (2) the permit shall not be issued after a finding that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of ''this Act'' of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of ''this Act.'' The reference to ''this Act'' in section 510(c) of SMCRA includes SMCRA, the implementing Federal regulations, and all State and Federal programs approved under SMCRA. (*See* 48 FR 44344, 44389, September 28, 1983. *See also* 53 FR 38868, 38882–38883, October 3, 1988.)

With regard to the first sentence of UCA 40–10–11(3) that requires that the permit application contain a schedule listing any and all notices of violations, the provision encompasses violations of all State and Federal programs approved under SMCRA, but it does *not* encompass violations of SMCRA itself or violations of the implementing Federal regulations. With regard to the portion of UCA 40–10–11(3) that deals with the pattern of violations, ''this chapter'' encompasses only violations of the State statute. It does *not* encompass violations of SMCRA, the implementing Federal regulations, any State and Federal programs enacted under SMCRA, or other provisions of the approved Utah program.

OSM discussed these issues in its October 24, 1994, issue letter to Utah (issue No. 4). Utah agreed in its December 7, 1994, response to OSM's issue letter that UCA 40–10–11(3) needed to be revised in accordance with the deficiencies identified in OSM's issue letter. Utah stated that it would, in its 1996 legislative session, pursue the changes to UCA 40–10–11(3).

Based upon the above, the Director, with the requirement that Utah revise UCA 40–10–11(3) to require that (1) the schedule of the applicant's mining law violations required in connection with a permit application includes violations of SMCRA and the implementing Federal regulations and (2) the pattern of violations determination discussed therein includes violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program, finds UCA 40–10–11(3) to be no less stringent than section 510(c) of SMCRA. The Director approves the proposed revisions at UCA 40–10–11(3).

8. UCA 40–10–11(5)(a), Remining Operation Violations Resulting From Unanticipated Events or Conditions

Proposed UCA 40–10–11(5)(a) provides that the prohibition of UCA 40–10–11(3), which limits the issuance of a permit for violations (discussed above at finding No. 7), does not apply to a permit application after October 14, 1992, if the violation resulted from an unanticipated event or condition that occurred at a surface coal mining operation on lands eligible for remining under a permit held by the person making the application. This provision is similar to section 510(e) of SMCRA, except that section 510(e) of SMCRA applies after the date of enactment of the Energy Policy Act of 1992, which was October 24, 1992. OSM discussed the difference in dates in its October 24, 1994, issue letter to Utah (issue No. 4). Utah stated in its December 7, 1994, response to OSM's issue letter that the October 14 date at UCA 40–10–11(5)(a) is a typographical error and that the correct date should be October 24.

With the requirement that Utah revise UCA 40–10–11(5)(a) to reflect an effective date of ''after October 24, 1992,'' the Director finds UCA 40–10–11(5)(a) to be no less stringent than section 510(e) of SMCRA. The Director approves proposed UCA 40–10–11(5)(a).

9. UCA 40–10–13(2)(b), Location of Informal Conferences

Existing UCA 40–10–13(2)(b) states that, if a person files written objections on an initially-proposed or revised mine permit application, the Division shall hold an informal conference within a reasonable time of the receipt of the objections or request. Utah proposed to revise this rule to further state, among other things, that:

> [t]he conference shall be informal and shall be conducted in accordance with the procedures described in Subsection (b), irrespective of the requirements of Section [UCA] 63–46b–5, Administrative Procedures Act. The conference *may* be held in the locality of the coal mining and reclamation operation if requested within a reasonable time after written objections or the request for an informal conference are received by the division.

Emphasis added. The procedures described in subsection (b) of UCA 40–10–13(2) are consistent with the procedures for informal conferences established by section 513(b) of SMCRA, except that SMCRA requires that the regulatory authority *shall* hold an informal conference in the locality of the proposed mining, if requested within a reasonable time of the receipt of such written objections or the request.

Because Utah did not submit any rationale for this statute, it is not clear what it intended with the use of the word ''may'' instead of ''shall.'' It is possible that Utah intended, as section 513(b) of SMCRA requires, that the Division would always hold an informal conference in the locality of the proposed mining when requested within a reasonable time after receipt of the objections or request. However, the use of the word ''may'' in the proposed

statute would appear to allow Utah discretion to not hold the informal conference in the locality of the proposed mining even when the Division receives a request to do so within a reasonable time. The Director finds that UCA 40–10–13(2)(b), to the extent that the first sentence of the proposed new language at this statute requires that the conference be informal and be conducted in accordance with the procedures for informal conferences, is no less stringent than section 513(b) of SMCRA, and approves this part of the statute. However, to the extent that the second sentence Utah proposed to add at UCA 40–10–13(2)(b) allows the Division to possibly not hold the informal conference in the locality of the coal mining and reclamation operation when such conference is requested within a reasonable time, the Director finds UCA 40–10–13(2)(b) is less stringent than section 513(b) of SMCRA. Utah stated in its December 7, 1994, response to OSM's October 24, 1994, issue letter (issue No. 6), that it would pursue a change from the discretionary ''may'' in holding the informal conference in the locality of the mining operation to a mandatory ''shall'' in its 1995 legislative session.

Therefore, with the requirement that Utah revise UCA 40–10–13(2)(b) to change the word ''may'' to ''shall'' in the sentence that begins ''[t]he conference may be held in the locality of the coal mining and reclamation operation * * *,'' the Director finds UCA 40–10–13(2)(b) to be no less stringent than section 513(b) of SMCRA. The Director approves the proposed revisions at UCA 40–10–13(2)(b).

10. UCA 40–10–14(6), Appeal to District Court and Further Review

In response to the required amendment at 30 CFR 944.16(b) (September 27, 1994; 59 FR 49185, 49186; finding No. 3), which required Utah to alleviate a discrepancy in the requirements addressing the jurisdiction of the Utah Supreme Court and the State district courts, and at its own initiative, Utah proposed to revise UCA 40–10–14(6). Specifically, Utah proposed that:

(a) *[a]n* applicant or person with an interest which is or may be adversely affected who has participated in the proceedings [to determine whether a permit should be issued] as an objector, and who is aggrieved by the decision of the board, *may appeal the decision of* the board *directly to the Utah Supreme Court.*

(b) *[i]f the board* fails to act within the time limits specified in this chapter [UCA Title 40, Chapter 10], *the applicant or any person with an interest which is or may be adversely affected, who has requested a hearing in accordance with Subsection (3), may bring an action in* the district court for the county in which the proposed operation is located.

(c) *[a]ny party to the action in district court may appeal from the final judgment, order, or decree of the district court.*

(d) *[t]ime frames for appeals under Subsections (6) (a) through (c) shall be consistent with applicable provisions in Section 63–46–14, Administrative Procedures Act.*

(Italics indicate new language proposed to be added to this statute.) Utah also proposed the deletion of the provision at UCA 40–10–14(6)(b) that required that ''[r]eview of the adjudication of the district court is by the [Utah] Supreme Court.''

Section 526(e) of SMCRA provides, in pertinent part, that actions of the State regulatory authority pursuant to an approved State program are subject to judicial review by a court of competent jurisdiction in accordance with State law.

The Director finds that Utah's proposed procedures for further review and appeal of decisions concerning permit applications at UCA 40–10–14(6) are consistent with and no less stringent than the judicial review requirements of section 526(e) of SMCRA. Therefore, the Director approves proposed UCA 40–10–14(6). The Director also notes that the proposed revisions at UCA 40–10–14(6) satisfy the required amendment at 30 CFR 944.16(b) (59 FR 49185, 49186; September 27, 1994; finding No. 3), which required Utah to amend this statute to eliminate inconsistencies regarding appellate procedures. Accordingly, the Director is removing the required amendment at 30 CFR 9434.16(b).

11. UCA 40–10–16(6) (b) through (d), Informal Conferences or Formal Hearings Pertaining to Performance Bond Release Decisions

Utah proposed to delete its procedural requirements pertaining to bond release decisions at UCA 40–10–16(6) (b) through (d) and to replace them with a reference in UCA 40–10–16(6)(d) to the Board's Rules of Practice and Procedure, which are at Utah Admin. R. Part 641. Existing UCA 40–10–16(6) is substantively identical to the provisions of sections 519 (f), (g), and (h) of SMCRA, which provides, in pertinent part, the requirements for advertising notice of a hearing, establishing an informal conference to resolve written objections, gathering evidence, and compiling a verbatim record and making a transcript available.

The procedural requirements at sections 519 (f), (g), and (h) of SMCRA are contained in the referenced Rules of Practice and Procedure of the Board at Utah Admin. R. Part 641. In addition, Utah has clarified, that for the purposes of UCA 40–10–16(6), all of the provisions of Utah Admin. R. Part 641 apply to hearings held for the purpose of bond release.

There is no counterpart provision in SMCRA similar to Utah's provision at UCA 40–10–16(6)(c) that allows an informal conference to be converted to a formal proceeding under the standards set forth at UCA 63–46b–4 of UAPA. OSM requested in its October 24, 1994, issue letter (issue No. 8) that Utah verify that all procedural requirements accompanying a formal hearing will occur prior to continuing the conference as a formal proceeding when an informal conference is converted to a formal proceeding under UCA 63–46b–4. Utah responded in its December 7, 1994, letter that when a hearing is converted to a formal proceeding from an informal proceeding, all of the requirements of a formal proceeding apply.

Based upon Utah's assurances that the provisions of Utah Admin. R. Part 641, Rules of Practice and Procedure of the Board, provide for counterpart requirements to sections 519 (f), (g), and (h) of SMCRA, apply to bond release hearings, and that, when an informal hearing is converted to a formal hearing, the requirements of a formal proceeding apply, the Director finds that the revisions proposed by Utah at UCA 40–10–16(6) are no less stringent than sections 519 (f), (g), and (h) of SMCRA. The Director approves the revised statute.

12. UCA 40–10–18(4) (a) through (c), Damage Resulting From Underground Coal Mining Subsidence

Utah proposed new language at UCA 40–10–18(4) (a) through (c) to provide:

(a) [u]nderground coal mining operations conducted after October 24, 1994, shall be subject to the following requirement: The permittee shall promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and related structures of noncommercial building due to underground coal mining operations. Repair of damage will include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures of noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building and will be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium prepaid insurance policy.

(b) [n]othing in Subsection (4) shall be construed to prohibit or interrupt underground coal mining operations.

(c) [w]ithin one year after the date of enactment of Subsection (4), the board shall adopt final rules to implement Subsection (4).

The proposed language at UCA 40–10–18(4)(a) is substantively identical to the language provided at section 720(a)(1) of SMCRA, which requires repair or compensation for material damage to certain structures resulting from subsidence due to underground coal mining. Therefore, the Director finds that UCA 40–10–18(4)(a) is no less stringent than SMCRA and approves the statute.

The proposed language at UCA 40–10–18(4)(b) is identical to the last sentence of section 720(a)(2) of SMCRA, which provides that ''[n]othing in this section shall be construed to prohibit or interrupt underground coal mining operations.'' This proposed language is consistent with section 720(a)(2) of SMCRA and the Director approves it. However, UCA 40–10–18(4)(b) lacks a counterpart provision to the first sentence of section 720(a)(2), which requires the prompt replacement of any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. As stated in the March 31, 1995, **Federal Register** final rule (60 FR 16722, 16745), if the Director determines that certain State program provisions should be amended in order to be made no less effective that the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17. For Utah, this may mean that a 30 CFR part 732 issue letter may be written if a determination is made that Utah's program is less effective than the Federal rules concerning the protection of water supplies affected by underground coal mining operations.

The proposed language at UCA 40–10–18(4)(c) is Utah's counterpart provisions to section 720(b) of SMCRA, which requires the promulgation, after providing notice and an opportunity for public comment, of final regulations to implement the subsidence provisions of section 720 of SMCRA. The Director finds that UCA 40–10–18(4)(c) is no less stringent than section 720(b) of SMCRA and approves it.

13. UCA 40–10–20(2)(e)(ii), Contest of Violation or Amount of Civil Penalty

In response to the Director's previous finding that UCA 40–10–20(3) was less stringent than section 518(c) of SMCRA, and the Director's deferred decision on this statutory provision (September 27, 1994; 59 FR 49185, 49187; finding No. 5), Utah proposed to create UCA 40–10–20(2)(e)(ii) to require that, if the operator charged with a violation fails to forward the amount of the penalty to the Division within 30 days of receipt of the results of an informal conference, the operator waives any opportunity ''for further review of the violation or to contest the violation.''

Section 518(c) of SMCRA provides, in part, that failure of the operator to forward the amount of the penalty to the Secretary of the Interior within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. Utah's proposed phrase ''for further review of the violation or to contest the violation'' addresses an operator's waiver of the right to contest the fact of the violation, but does not address an operator's waiver of the right to contest the amount of the civil penalty.

The Director finds UCA 40–10–22(2)(e)(ii) to be less stringent than section 518(c) of SMCRA to the extent that it does not preclude an operator from contesting the amount of the penalty when the operator does not forward the amount of the civil penalty to the Division within 30 days of the operator's receipt of the results of the informal conference. Utah stated in its December 7, 1994, response to OSM's October 24, 1994, issue letter (issue No. 10) that it would pursue clarification in its 1996 legislative session of what is waived when an operator fails to forward the amount of the penalty to the Division.

Therefore, with the requirement that Utah revise UCA 40–10–20(2)(e)(ii) to provide for a waiver of the operator's right to contest the amount of the civil penalty when the operator fails to forward the amount of the penalty to the regulatory authority within 30 days of receipt of the results of the informal conference, the Director finds UCA 40–10–20(2)(e)(ii) to be no less stringent than section 518(c) of SMCRA. The Director approves the proposed statute.

14. UCA 40–10–22(2)(b), Cessation Orders, Abatement Notices, and Show Cause Orders

Utah proposed at UCA 40–10–22(2)(b), among other things, that any relief granted by a State district court to enforce an order pursuant to UCA 40–10–22(2)(a)(i) shall continue in effect until the completion or final termination of all proceedings for review of such order, unless prior to completion or termination, the Utah Supreme Court on review grants a stay of enforcement or sets aside or modifies the Board's order that is being appealed.

Section 521(c) of SMCRA provides that, under similar circumstances, any relief granted by the Federal district court shall continue in effect until completion or final termination of all proceedings for review of such order, unless prior thereto, the district court granting such relief sets it aside or modifies it. Section 521(d) of SMCRA requires that an approved State program contain the same or similar procedural requirements relating to the enforcement provisions of section 521 of SMCRA.

OSM requested in its October 24, 1994, issue letter that Utah clarify whether the provisions of UCA 40–10–22(2)(b) allow the State district court to set aside or modify its own relief as section 521(d) of SMCRA does (issue No. 11). Utah stated in its December 7, 1994, response to OSM's issue letter that State law provides for the Utah Supreme Court to be the authority for modifying or setting aside a Board order or decision, and that, to the extent that any judicial body can reconsider its own order or decision, the State district court can also modify or set aside its own order or decision.

Based upon Utah's explanation of its rationale for the proposed revisions at UCA 40–10–22(2)(b), the Director finds that this provision is consistent with the provisions of section 521(c) of SMCRA. The Director approves the proposed revisions to UCA 40–10–22(2)(b).

15. UCA 40–10–22(3)(e), Costs Assessed Against Either Party Adversely Affected by the Board's Notice or Order

Utah proposed to revise UCA 40–10–22(3)(e) to provide:

[w]henever an order is entered under this section or as a result of any adjudicative proceeding under this chapter, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the board to have been reasonably incurred by that person in connection with his participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the board, resulting from adjudicative proceedings, deems proper.

UCA 40–10–22(3)(e) is similar to section 525(e) of SMCRA, except Utah is proposing to change the term ''administrative proceedings'' to ''adjudicative proceedings.'' This

change is consistent with the addition of a definition for the term ''adjudicative proceeding'' proposed by Utah in this amendment at UCA 40–10–3(1). As discussed in finding No. 3, the definition of ''adjudicative proceeding'' as proposed by Utah at UCA 40–10–3(1) does not encompass judicial review.

Use of the term ''adjudicative proceeding'' in UCA 40–10–22(3)(e) allows Utah to limit the reimbursement of costs and expenses incurred through participation in the proceedings to only proceedings which are adjudicatory in nature. Section 525(e) of SMCRA provides for the award of costs and expenses incurred in connection with ''any administrative proceeding.'' Prior to Utah's adoption of the amendment under consideration in this rulemaking, UCA 40–10–22(3)(e) contained similar language.

Both the Interior Board of Land Appeals (IBLA) and the U.S. District Court for the Utah District declined to delineate the full reach of the phrase ''any administrative proceeding'' in section 525(e) of SMCRA when presented with an opportunity to do so. *Natural Resources Defense Council, Inc. (NRDC), et al.* v. *Office of Surface Mining Reclamation and Enforcement (OSM) et al.*, 107 IBLA 339, 365 n. 12 (1989); *Utah International, Inc.* v. *Department of the Interior*, 643 F. Supp. 819, 825 n. 25 (D. Utah 1986). However, in deciding these cases, both IBLA and the U.S. District Court held that this phrase should not be read literally, but rather must be interpreted in the context of the legislative history of SMCRA and case law concerning attorney fee and expense awards under other statutes. Both opinions contain extensive dicta suggesting that the phrase could or should be read to include only administrative proceedings of an adjudicatory nature, not proceedings that are part of the fact-finding process culminating in an initial agency decision, e.g., informal conferences on permit applications. *NRDC, supra*, at 354–360; *Utah International, supra*, at 820–825.

Furthermore, the Federal regulations at 43 CFR 4.1290 and 4.1291, which implement this section of SMCRA in part, provide for an award of costs and expenses only in connection with administrative proceedings resulting in the issuance of a final order by an administrative law judge or IBLA. The preamble to these regulations notes that the Secretary rejected comments requesting the scope of the rules be expanded to allow the award of costs and expenses in other types of administrative proceedings, such as rulemaking (4 CFR 34385, August 3, 1978).

Therefore, the Director finds the Utah statutory provision at UCA 40–10–22(3)(e) that allows for award of costs and expenses in connection with an adjudicatory proceeding is not inconsistent with section 525(e) of SMCRA and its implementing regulations, as interpreted by case law. The Director approves the proposed revisions to this sttatute.

The Director's approval is based upon OSM's interpretation that the term ''adjudicatory proceedings,'' as used at UCA 40–10–22(3)(e) includes all classes of actions in which participants would be eligible for an award of costs and expenses under 43 CFR 4.1290 through 4.1295. The Director notes that, as more case law develops, it may be necessary in the future to further expand the provisions at UCA 40–10–22(3)(e) to include other types of administrative proceedings. In that event, OSM would notify Utah in accordance with 30 CFR Part 732.

16. UCA 40–10–28 (1)(a)(ii) and (2)(a), Recovery of Reclamation Costs and Liens Against Reclaimed Lands

In response to the Director's previous finding that UCA 40–10–28(1)(a)(ii) and 40–10–28(2)(a) were not consistent with sections 407(e) and 408(a) of SMCRA and the Director's deferred decision on these statutory provisions (September 27, 1994; 59 FR 49185, 49187–88; finding Nos. 7 and 9), Utah proposed to add new language to its provisions at UCA 40–10–28(1)(a)(ii) and UCA 40–10–28(2)(a).

Utah proposed at UCA 40–10–28(1)(a)(ii) to require that the sale price of land that is sold to the State or local government for public purposes may not be less than the actual ''cost of the purchase of the property by the State plus the'' costs of reclaiming the land. This requirement is analogous to and no less stringent than the counterpart Federal provision at section 407(e) of SMCRA, which provides that the sale price of land sold to the State or local government for public purposes may in no case be less than the cost of purchase and reclamation of such land.

Utah also proposed the addition of a new provision at UCA 40–10–28(2)(a) to provide, in addition to other criteria, that a lien will be placed against reclaimed land except where the surface owner ''owned the land prior to May 2, 1977.'' This specific requirement is analogous to and no less stringent than the requirement of section 408(a) of SMCRA, which provides, in part, that no lien shall be filed against the property of any person who owned the land prior to May 2, 1977.

As discussed above, the revisions proposed by Utah in this amendment at UCA 40–10–28(1)(a)(ii) and 40–10–28(2)(a) are consistent with sections 407(e) and 408(a) of SMCRA. Therefore, the Director approves the proposed revisions to these statutes.

17. UCA 40–10–30, Judicial Review of Orders or Rules

Utah proposed new provisions at UCA 40–10–30 to provide, in part:

(1) [j]udicial review of adjudicative proceedings under this chapter is governed by Title 63, Chapter 46b, Administrative Procedures Act, and provisions of this chapter consistent with the Administrative Procedures Act.

(2) [j]udicial review of the board's rulemaking procedures and rules adopted under this chapter is governed by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) [a]n appeal from *an* order of the board shall be *directly to the Utah Supreme Court* and is not a trial de novo. * * *

(4) [a]n action or appeal involving *an* order *of the board* shall be determined as expeditiously as feasible *and in accordance with Subsection 78–2–2(3)(e)(iv). The Utah Supreme Court* shall determine the issues on both questions of law and fact and shall affirm or set aside the rule or order, enjoin or stay the effective date of agency action, or remand the cause to the board for further proceedings. * * *

(5) [i]f the board fails to perform any act or duty under this chapter which is not discretionary, the aggrieved person may bring an action in the district court of the county in which the operation or proposed operation is located.

(Italics indicate new language proposed to be added to this statute.) Utah also proposed to delete the requirement at existing UCA 40–10–30(3) that ''[r]eview of the adjudication of the district court is by the Supreme Court.''

The proposed revisions at UCA 40–10–30 are consistent with the requirements of the counterpart Federal provisions of section 526 of SMCRA. Therefore, the Director finds that the proposed revisions at UCA 40–10–30 are no less stringent than section 526 of SMCRA and approves them.

IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments on the proposed amendment that were received by OSM, and OSM's response 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 and Utah AMLR plan.

In a telephone conversation on May 11, 1994, the Bureau of Mines stated that it had no comments on the proposed amendment (administrative record No. UT–922).

The U.S. Army Corps of Engineers responded in a letter dated May 23, 1994, that it found the proposed changes to be satisfactory (administrative record No. UT–930).

In a letter dated May 18, 1995, the Mine Safety and Health Administration stated that its personnel had reviewed the proposed amendment for possible conflicts with MSHA regulations and that no conflicts between the two were found (administrative record No. UT–1056).

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 No. UT–919). It responded on May 9, 1994, that it believed that the proposed amendment would have no impact on water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

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–919). The SHPO did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with additional requirements, Utah's proposed amendment as submitted on April 14, 1994, and as revised and supplemented with additional explanatory information on December 7, 1994.

The Director approves the following sections of the proposed amendment, as discussed in: finding No. 1, UCA 40–10–2 (1) through (6), concerning purpose; UCA 40–10–3 (2) through (7), (9) through (20), and (22) [recodification], concerning the definitions of certain terms; UCA 40–10–6.5 (2) and (3) [recodification], concerning rulemaking procedures; UCA 40–10–7(1), concerning prohibited financial interest in mining operations; UCA 40–10–8 (1) and (3), concerning exploration rules issued by the Division and penalties for violations; UCA 40–10–10(2), concerning submission of the application and reclamation plan; UCA 40–10–11 (1), (2)(a) through (d), (e)(ii), (f) (i) and (iii), and (4) (a) and (b), concerning Division action on the permit application, requirements for approval, and restoration of prime farmland; UCA 40–10–12(3), concerning revision or modification of permit provisions; UCA 40–10–14 (2) and (3), concerning notice to the applicant of approval or disapproval of the application and hearings; UCA 40–10–15(1), concerning performance bonds; UCA 40–10–16 (1), (3), and (6)(a), concerning release of the performance bond, surety, or deposit, action on the application for relief of bond, and formal hearings or informal conferences; UCA 40–10–17 (2)(g), (2)(j) (i)(B) and (ii) (A) and (B), (2)(m), (2) (o) and (o)(i), (iv), and (v), (2)(p)(i)(F), (ii), and (iii), (2)(t)(i), (2)(v)(viii), (3)(b) and (b)(ii), (3)(c), (4) (a) and (d), and (5), concerning performance standards for all coal mining and reclamation operations, additional standards for steep-slope surface coal mining, and variances; UCA 40–10–18 (1), (2)(i)(i)(B), (2)(j), and (5), concerning underground coal mining, rules regarding surface effects, operator requirements for underground coal mining, and applicability of other chapter provisions; UCA 40–10–19 (1) and (2)(a), concerning information provided by the permittee to the Division and inspections by the Division; UCA 40–10–21(1)(a) (i) and (ii), and (2)(a)(ii), and (5), concerning civil action to compel compliance with chapter, jurisdiction, and other rights not affected; UCA 40–10–22 (1)(c) and (2)(a)(i), concerning violation of chapter or permit conditions and inspections; UCA 40–10–24(1)(c)(i) (A), (B), (C), and (D), and (ii), (e) (i), (ii), and (iii), and (2) (a) and (b), concerning determination of unsuitability of lands for surface coal mining, petitions, and public hearings; UCA 40–10–25(2) (d) and (e) [recodification] and (3) and (3)(a), concerning abandoned mine reclamation program, expenditure priorities, and eligible lands and water; and UCA 40–10–27(5)(a) and (12)(b), concerning entry upon land adversely affected by past coal mining practices and State acquisition of lands; finding No. 2, UCA 40–10–3 (8) and (21), concerning definitions for the terms ''lands eligible for remining'' and ''unanticipated event or condition;'' UCA 40–10–11(5) (b), and (c), concerning Division action on permit application and requirements for approval; UCA 40–10–17(2)(t)(ii), concerning performance standards for lands eligible for remining; UCA 40–10–22 (1)(d) and (3) (a), (b), (d) and (f), concerning violations of chapter or permit conditions, cessation orders, abatement notices, or show cause orders, suspension or revocation of permits, and reviews,; and UCA 40–10–25(2)(d) [deletion], 3(b), (4), (5), and (6), concerning abandoned mine reclamation program, eligible lands and water; finding No. 4, UCA 40–10–4, concerning repeal of the applicability of provisions of UCA 40–8; finding No. 5, UCA 40–10–6.5 (1) and (3), concerning rulemaking authority and deletion of administrative procedures; finding No. 6, UCA UCA 40–10–6.7 and Utah Admin. R. 641–100–100, concerning administrative procedures; finding No. 10, UCA 40–10–14(6), concerning appeal to district court and further review; finding No. 11, UCA 40–10–16(6) (b) through (d), concerning informal conferences or formal hearings pertaining to performance bond release decisions; finding No. 12, UCA 40–10–18(4), concerning damage resulting from underground coal mining subsidence; finding No. 15, UCA 40–10–22(2)(b), concerning cessation orders, abatement notices, and show cause orders; finding No. 15, UCA 40–10–22(3)(e), concerning costs assessed against either party adversely affected by the Board's notice or order; finding No. 16, UCA 40–10–28(1)(a)(ii) and (2)(a), concerning recovery of reclamation costs and liens against reclaimed lands; and finding No. 17, UCA 40–10–30, concerning judicial review of rules or orders.

With the requirement that Utah further revise its statutes, the Director approves, as discussed in: finding No. 3, UCA 40–10–3(1), concerning the definition of ''adjudicative proceeding;'' finding No. 7, UCA 40–10–11(3), concerning the schedule of an applicant's mining law violations and pattern of violations determination; finding No. 8, UCA 40–10–11(5)(a), concerning remining operation violations resulting from unanticipated events or conditions; finding No. 9, UCA 40–10–13(2)(b), concerning the

location of informal conferences; and finding No. 13, UCA 40–10–20(2)(e)(ii), concerning contest of the violation or the amount of the civil penalty.

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

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

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments or AMLR plans and revisions thereof since each such program or plan 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. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

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

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or 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.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 13, 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 (ff) to read as follows;

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(ff) The revisions to or additions of the following sections of the Utah Code Annotated 1953 (UCA), Title 40, and the Utah Administrative Rules (Utah Admin. R.) for Coal Mining, as submitted to OSM on April 14, 1994, and as revised and supplemented with explanatory information on December 7, 1994, are approved effective July 19, 1995.

UCA 40–10–2 (1) through (6)	Purpose.
40–10–3(1)	Definition of ''Adjudicative Proceeding.''
40–10–3 (2) through (7), (9) through (20), and (22)	Recodification of Definitions.
40–10–3 (8) and (21)	Definitions of ''Lands Eligible for Remining'' and ''Unanticipated Event or Condition.''
40–10–4	Repeal of the Applicability Provisions of 40–8.
40–10–6.5(1)	Rulemaking Authority.
40–10–6.5 (2) and (3)	Recodification of Rulemaking Procedures.
40–10–6.5(3)	Deletion of Administrative Procedures.
40–10–6.7	Administrative Procedures.
40–10–7(1)	Prohibited Financial Interests in Mining Operations.
40–10–8 (1) and (3)	Exploration Rules Issued by Division and Penalty for Violations.
40–10–10(2)	Submission of Applications and Reclamation Plans.
40–10–11 (1), (2)(a) through (d), (e)(ii), (f) (i) and (iii), and (4) (a) and (b).	Division of Oil, Gas and Mining (Division) Action on Permit Applications, Requirements for Approval, and Restoration of Prime Farmland.
40–10–11(3)	Schedule of Applicant's Mining Law Violations and Pattern of Violations Determination.

40–10–11(5)(a)	Remining Operation Violations Resulting From Unanticipated Events or Conditions.
40–10–(5) (b) and (c)	Division Action on Permit Applications and Requirements for Approval.
40–10–12(3)	Revisions or Modifications of Permit Provisions.
40–10–13(2)(b)	Location of Informal Conferences.
40–10–14 (2) and (3)	Notice to Applicant of Approval or Disapproval of Application and Hearings.
40–10–14(6)	Appeals to District Court and Further Review.
40–10–15(1)	Performance Bonds.
40–10–16 (1), (3), and (6)(a)	Release of the Performance Bond, Surety, or Deposit, Action on Application for Relief of Bond, and Formal Hearings or Informal Conferences.
40–10–16(6) (b) through (d)	Information Conferences or Formal Hearings Pertaining to Performance Bond Release Decisions.
40–10–17(2) (g), (2)(j)(i) (B) and (ii)(A) and (B), (2)(m), (2) (o), and (o)(i), (iv), and (v), (2)(p) (i)(F), (ii), and (iii), (2)(t)(i), (2) (v)(viii), (3) (b) and (b)(ii), (3)(c), (4) (a) and (d), and (5).	Performance Standards for All Coal Mining and Reclamation Operations, Additional Standards for Steep-Slope Surface Coal Mining, and Variances.
40–10–17(2)(t)(ii)	Performance Standards for All Coal Mining and Reclamation Operations.
40–10–18 (1), (2)(i)(i)(B), (2)(j), and (5)	Underground Coal Mining, Rules Regarding Surface Effects, Operator Requirements for Underground Coal Mining, and Applicability of Other Chapter Provisions.
40–10–18(4) (a) through (c)	Damage Resulting From Underground Coal Mining Subsidence.
40–10–19 (1) and (2)(a)	Information Provided by Permittee to Division and Inspections by Division.
40–10–20(2)(e)(ii)	Contest of the Violation or the Amount of the Civil Penalty.
40–10–21 (1)(a) (i) and (ii), (2)(a)(ii), and (5)	Civil Action to Compel Compliance with Chapter, Jurisdiction, and Other Rights Not Affected.
40–10–22 (1)(c) and (2)(a)(i)	Violations of Chapter or Permit Conditions and Inspections.
40–10–22 (1)(d) and (3) (a), (b), (d), and (f)	Violations of Chapter or Permit Conditions, Cessation Orders, Abatement Notices, or Show Cause Orders, and Suspensions or Revocations of Permit.
40–10–22(2)(b)	Cessation Orders, Abatement Notices, and Show Cause Orders.
40–10–22(3)(e)	Costs Assessed Against Either Party.
40–10–24(1)(c)(i) (A), (B), (C), and (D), and (ii), (e) (i), (ii), and (iii), and (2) (a) and (b).	Determination of Unsuitability of Lands for Surface Coal Mining, Petitions, and Public Hearings.
40–10–30	Judicial Review of Rules or Orders.
Utah Admin. R. 641–100–100	Administrative Procedures.

3. Section 944.16 is amended by removing and reserving paragraph (b) and adding paragraphs (e) through (i) to read as follows:

§ 944.16 Required program amendments.

* * * * *

(e) By March 1, 1996, Utah shall revise its definition of ''adjudicative proceeding'' at UCA 40–10–3(1) to include judicial review of agency actions.

(f) By March 1, 1996, Utah shall revise UCA 40–10–11(3) to require that (1) the schedule of the applicant's mining law violations required in connection with a permit application includes violations of SMCRA and the implementing Federal regulations and (2) the pattern of violations determination discussed therein includes violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program.

(g) By March 1, 1996, Utah shall revise UCA 40–10–11(5)(a) to reflect an effective date of ''after October 24, 1992.''

(h) By March 1, 1996, Utah shall revise UCA 40–10–13(2)(b) to change the word ''may'' to ''shall'' in the sentence that begins ''[t]he conference may be held in the locality of the coal mining and reclamation operation * * *.''

(i) By March 1, 1996, Utah shall revise UCA 40–10–20(2)(e)(ii) to provide for a waiver of the operator's right to contest the amount of the civil penalty when the operator fails to forward the amount of the penalty to the regulatory authority within 30 days of receipt of the results of the informal conference.

4. Section 944.25 is amended by adding paragraph (c) to read as follows:

§ 944.25 Approval of amendments to State abandoned mine plan.

* * * * *

(c) The following sections of the Utah Code Annotated 1953 (UCA), Title 40, pertaining to the Utah abandoned mine plan, as submitted to OSM on April 14, 1994, and revised on December 7, 1994, are approved effective July 19, 1995.

40–10–25(2)(d), Deletion of Research and Demonstration Projects.

40–10–25(2) (d) and (e), Recodification of Expenditure Priorities.

40–10–25 (3), (3)(a), (3)(b), (4), (5), and (6), Eligible Lands and Water.

40–10–27 (5)(a) and (12)(b), Entry Upon Land Adversely Affected by Past Coal Mining Practices and State Acquisition of Lands.

40–10–28 (1)(a)(ii) and (2)(a), Recovery of Reclamation Costs and Liens Against Reclaimed Lands.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AG86

Chronic Fatigue Syndrome

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule without change an interim rule adding a diagnostic code and evaluation criteria for chronic fatigue syndrome to the VA Schedule for Rating Disabilities. The intended effect of this rule is to insure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.