Regulations, HUD's supplemental claim procedures. No significant programmatic or policy changes would result from its promulgation.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

List of Subjects in 24 CFR part 203

Mortgage insurance.

Accordingly, 24 CFR part 203 is amended as follows:

1. The authority citation for part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.401 is amended by adding a new paragraph (c) to read as follows:

§ 203.401 Amount of payment—conveyed properties and non-conveyed properties.

* * * * *

(c) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from payment by the Commissioner of the final payment except for:

(1) Cases where the Commissioner requests or requires a deficiency judgment.

(2) Other cases where the Commissioner determines it appropriate and expressly authorizes an extension of time.

For the purpose of this section, the term "final payment" shall mean, in the case of claims filed for conveyed properties, the payment under subpart B of this part which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information filed pursuant to § 203.365 of this part. In the case of claims filed under claims without conveyance of title, "final payment" shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§ 203.368 and 203.401(b) of this part.

3. Section 203.404 is amended by adding a new paragraph (c) to read as follows:

§ 203.404 Amount of payment—assigned mortgages.

* * * * *

(c) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from final payment by the Commissioner. For the purpose of this section, the term "final payment" shall mean the payment which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information pursuant to § 203.351 of this part.

Dated: January 23, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91–2087 Filed 1–28–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of an amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to title 40, chapter 10, of the Utah Code Annotated (U.C.A. 1953), otherwise known as the Utah Coal Mining and Reclamation Act (the Utah Act). The amendment pertains to rulemaking authority and procedures, the deadline for review and proposal of revision of rules, and the deadline for revision of rules. The amendment is intended to improve the operational efficiency of Utah's program.

EFFECTIVE DATE: January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., suite 310, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Progam

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. Information regarding the general background for the Utah program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to the approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Amendment

By letter dated October 10, 1990 (administative record No. UT–589), Utah submitted a proposed amendment to its program pursuant to SMCRA. In the amendment, Utah reproposed State-initiated provisions that it previously withdrew (administrative record No. UT–568) from another amendment (administrative record No. UT–540). Specifically, Utah proposed to add provisions to the Utah Act at U.C.A. 40–10–6.5 (1), (2), and (3) (rulemaking authority and procedures) and U.C.A. 40–10–6.6 (1) and (2) (deadline for review and proposal of revision of rules, and deadline for revision of rules).

OSM announced receipt of the proposed amendment in the October 30, 1990, **Federal Register** (55 FR 45618) and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on November 29, 1990. The public hearing, scheduled for November 26, 1990, was not held because no one requested an opportunity to testify.

III. Director's Findings

After a thorough review, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the proposed amendment submitted by Utah on October 10, 1990, is no less stringent than SMCRA and no less effective than 30 CFR chapter VII, as discussed below. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM's ongoing oversight of the Utah program.

1. U.C.A. 40–10–6.5 (1), (2), and (3), Rulemaking Authority and Procedures

Utah proposed to amend the Utah Act by adding a new section at U.C.A. 40–10–6.5, which establishes rulemaking

authority and procedures. U.C.A. 40–10–6.5 (1) and (2) direct the Board of Oil, Gas, and Mining (the Board) not to adopt rules to the Utah program that are more stringent than the Federal regulations unless the Board makes a written finding, after public comment and hearing and based upon evidence in the record, that the corresponding Federal regulations are not adequate to protect public safety and the environment of the State.

Section 503(a) of SMCRA requires that a State must demonstrate for its proposed program that it can carry out the provisions of SMCRA and meet its purposes through, among other things, a State law which provides for the regulation of surface coal mining and reclamation operations "in accordance with" the requirements of SMCRA and through State regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA. The terms "in accordance with" and "consistent with" are defined in the Federal regulations at 30 CFR 730.5 as meaning that (1) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of SMCRA, and (2) with regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of SMCRA.

Proposed U.C.A. 40–10–6.5 (1) and (2) would not allow Utah to reduce the effectiveness of its rules below the requirements of the Federal regulations, but would allow Utah to exceed the requirements of the Federal regulations if the appropriate conditions are met. The Director finds that rules adopted by Utah under these proposed provisions could be *no less effective than* the Federal regulations, as required by 30 CFR 730.5. Therefore, the Director finds that proposed U.C.A. 40–10–6.5 (1) and (2) are no less stringent that section 503(a) of SMCRA.

In addition to the aforementioned provisions, U.C.A. 40–10–6.5(3) provides that public hearings shall, as required at U.C.A. 40–10–6.5(2), be conducted in a manner that guarantees the parties' due process rights. It also provides examples of such due process rights, including the right to cross-examine any witness, and prohibits *ex parte* communication between any party and the Board.

Whereas SMCRA does not contain a direct counterpart provision to the State's proposed amendment, the Director finds that proposed U.C.A. 40–10–6.5(3) is consistent with the due process concerns of SMCRA (which are reflected throughout various provisions of SMCRA and the Federal regulations), including section 102(i) of SMCRA, which requires that appropriate procedures be in place for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by any State. The Director also finds that U.C.A. 40–10–6.5(3) does not adversely affect any other aspect of the Utah program.

For reasons discussed above, the Director approves U.C.A. 40–10–6.5 (1), (2), and (3).

2. U.C.A. 40–10–6.6 (1) and (2), Deadline for Review and Proposal of Revision of Rules, and Deadline for Revision of Rules

Utah proposed to amend the Utah Act by adding new sections at U.C.A. 40–10–6.6(1), deadline for review and proposal of revision of rules, and U.C.A. 40–10–6.6(2), deadline for revision of rules.

U.C.A. 40–10–6.6(1) requires that (1), within 6 months of Utah's effective date for promulgation of U.C.A. 40–10–6.5 and 40–10–6.6, the Board review and propose revisions to its rules in compliance with the rule stringency standard at U.C.A. 40–10–6.5 and (2), within 12 months of Utah's effective date for promulgation of U.C.A. 40–10–6.5 and 40–10–6.6, the Utah Division of Oil, Gas and Mining (Division) revise its rules in compliance with the rule stringency standard at U.C.A. 40–10–6.5.

U.C.A. 40–10–6.6(2) states that all existing rules of the Division shall remain in full force and effect after the effective date for promulgation of U.C.A. 40–10–6.5 and 40–10–6.6, pending the Board's review and the Division's revision of the Utah program rules in compliance with U.C.A. 40–10–6.6(1).

The Director finds that proposed U.C.A. 40–10–6.6 (1) and (2) contain administrative procedures for implementing U.C.A. 40–10–6.5 (discussed in finding No. 1). They do not have counterpart provisions in section 503(a) of SMCRA, which set forth the requirements for amending State programs. However, they are not inconsistent with any of the requirements of section 503(a) of SMCRA. Also, they do not adversely affect any other aspects of the Utah program. For these reasons, the Director approves U.C.A. 40–10–6.6 (1) and (2).

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various other Federal agencies with an actual or potential interest in the Utah program.

EPA did not comment on the proposed amendment.

By letter dated October 30, 1990, the U.S. Soil Conservation Service acknowledged receipt of the proposed amendment and stated that it had no comments (administrative record No. UT–598).

By letter dated November 7, 1990, the Mine Safety and Health Administration (MSHA) acknowledged receipt of the proposed amendment and stated that Utah's proposed statutes did not conflict with MSHA's regulations (administrative record No. UT–596).

By letter dated November 13, 1990, the Bureau of Mines acknowledged receipt of the proposed amendment and stated that the proposed amendment would have no significant adverse impacts to mineral resource production (administrative record No. UT–597).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director solicited the written concurrence of the Administrator of the EPA with respect to those provisions of the proposed program amendment which 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.*). EPA gave its written concurrence on the proposed amendment by letter dated December 3, 1990 (administrative record Number UT–603).

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

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendments to the SHPO and ACHP for comment. The SHPO acknowledged receipt of the proposed amendment and stated that he had no comments (administrative record No. UT–593). The ACHP did not provide any comments to OSM.

V. Director's Decision

Based on the above finding, the Director approves Utah's proposed amendment as submitted on October 10, 1990.

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.

VI. Procedural Determinations

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support 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 a new paragraph (p) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(p) Revisions to the following sections of the Utah Code Annotated 1953, title 40, as submitted to OSM on October 10, 1990, are approved effective January 29, 1991: U.C.A. 40–10–6.5 (1), (2), and (3), rulemaking authority and procedures, and U.C.A. 40–10–6.6 (1) and (2), deadline for review and proposal of revision of rules, and deadline for revision of rules.

[FR Doc. 91–2040 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is announcing the previously deferred approval of rules resulting from past rule making action by the Wyoming regulatory authority regarding the Wyoming permanent regulatory program (the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to Wyoming's coal waste disposal and to the retention of highwalls in permanent impoundments. The amendment is intended to revise the State program to be consistent with the counterpart Federal standards.

EFFECTIVE DATE: January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Guy Padgett Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East B Street, room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found in 30 CFR 950.12, 950.15 and 950.16.

II. Submission of Amendment

On May 1, 1986 the State of Wyoming submitted proposed amendments revising nine chapters of its approved permanent program regulations, known as the Rules and Regulations of the Wyoming Department of Environmental Quality, Land Quality Division (DEQ/LQD) (Administrative Record No. WY–A9–(1). The amendment was in response to a December 23, 1985 letter that OSM sent in accordance with Federal regulations at 30 CFR 732.17(d). Included in the submittal were proposed regulation changes to: (1) Wyoming's coal mine waste disposal regulations at chapter IV, section 3(c)(ii)(C)(I), (2) Wyoming's highwall elimination requirement at chapter IV, section 3(h)(iii)(A), and (3) Wyoming's highwall retention provisions at chapter IV, section 3(h)(iii)(B). At the time of Wyoming's submission, the remand of various counterpart Federal regulations was under appeal by the Secretary as a result of a U.S. District Court for the District of Columbia decision in *In Re: Permanent Surface Mining Litigation*, 620 F. Supp. 1519 (D.D.C. 1985). The Director elected to defer a decision on the above Wyoming proposed revisions, as announced in the November 24, 1986 **Federal Register** (51 FR 42209), pending the outcome of the Secretarial appeal. On January 29, 1988, the U.S. District Court of Appeals for the District of Columbia reversed the district court and reinstated a number of remanded rules including counterpart Federal regulations to the proposed Wyoming rules addressed herein (*National Wildlife Fed'n* v. *Hodel*, 839 F.2d 694 (DC Cir. 1988). The Director is therefore revisiting his previous decision to defer action.

Since public comment on these proposed Wyoming rules was previously sought in the May 21, 1986 **Federal Register** (51 FR 18621) and no comments were received on the rules, the Director is not reopening the comment period for this rulemaking action.

III. Director's Findings

On May 1, 1986, changes to the Wyoming program were proposed by deleting, at chapter IV, section 3(c)(ii)(C)(I), a standard that required coal mine waste piles to be constructed

in layers no more than 24 inches thick and compacted to be no less than 90 percent of the maximum dry density. In lieu of the deleted standard, Wyoming proposed at chapter IV, section 3(c)(ii)(C)(I), a requirement that coal mine waste disposal facilities be designed to attain a minimum static safety factor of 1.5. The amended regulation further provides that the foundation and abutments must be stable under all conditions of construction.

The State also proposed changes to the Wymoing Program at chapter IV, section 3(h)(iii)(A), by deleting a requirement for complete highwall elimination in all impoundments and adding, at chapter IV, section 3(h)(iii)(B), a standard that would allow the retention of highwalls in permanent impoundments provided the vertical portion of any remaining highwall is located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

Due to a ruling by the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Litigation,* 620 F. Supp. 1519 (D.D.C. 1985), several Federal regulations were remanded that coincided with Wyoming's proposed submittal. As a result of that court action, OSM then, among other things, suspended the following rules: (1) 30 CFR 816.49(a)(9)/817.49(a)(9), insofar as they permitted the retenetion of highwalls in permanent impoundments; (2) 30 CFR 816.81(c)(2)/817.81(c)(2), to the extent that they allowed construction or modification of coal waste refuse piles with less compaction than necessary to attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method; and (3) 30 CFR 816.83/817.83, to the extent that they allowed coal waste refuse piles to be constructed in lifts greater than 2 feet in thickness. OSM's notice of suspension appeared in the November 20, 1986 **Federal Register** (51 FR 41952).

The U.S. District Court's ruling was appealed by the Secretary. On January 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit rendered a decision which reinstated a number of the suspended rules in *National Wildlife Fed'n* v. *Hodel,* 839 F.2d 694 (DC Cir. 1988). OSM's notice of reinstatement was announced in the June 9, 1988 **Federal Register** (53 FR 21764). Among the Federal regulations that OSM reinstated are: (1) 30 CFR 816.49(a)(9)/817.49(a)(9), as promulgated on September 26, 1983 (48 FR 43994), to allow the retention of underwater highwalls in permanent impoundments; (2) 30 CFR 816.81(c)(2)/817.81(c)(2), as promulgated on September 26, 1983 (48 FR 44006), to allow the construction or modification of coal waste refuse piles with compaction that does not attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method, provided they achieve a long-term static safety factor of 1.5; and (3) 30 CFR 816.83/817.83, as promulgated on September 26, 1983 (48 FR 44006), to allow the construction of coal refuse piles using lifts of greater than 2 feet thickness, provided they achieve a long-term static safety factor of 1.5.

The Director now finds, that the proposed Wyoming rule at chapter IV, section 3(c)(ii)(C)(I) to be the same or similar as the Federal regulations at 30 CFR 816.81(c)(2)/817.81(c)(2) which require disposal facilities be designed to attain a minimum long-term static safety factor of 1.5. Additionally, the Wyoming program has established coal waste lift thickness requirements that mirror the Federal regulations at 30 CFR 816.83/817.83. The Director finds the Wyoming progam proposed mine waste disposal rules at chapter IV, section 3(c)(ii)(C)(I), to be no less effective than the Federal regulations.

The Director also finds that Wyoming's proposed deletion of a requirement for complete highwall elimination at chapter IV, section 3(h)(ii)(A), and replacement thereof with a provision at chapter IV, section 3(h)(iii)(B), that allows highwalls in permanent impoundments under certain circumstances, is acceptable based on the following rationale. In *National Wildlife Fed'n* v. *Hodel,* 839 F.2d 694 (DC Cir. 1988), the Court concluded that it was never the intent of Congress to have submerged highwalls in authorized impoundments removed in all cases. The Court reinstated the Federal regulations at 30 CFR 16.49(a)(9)/817.49(a)(9) and asserted that this was the type of judgement the Court would expect Congress to leave to the agency in charge, in this case, OSM. The Director's finding is further reinforced by the Court's affirmation of the Secretary of Interior's argument that SMCRA explicitly makes impoundments subject to the requirements of section 515(b)(8) and not to the general grading requirements of section 515(b)(3). The Director finds the proposed deletion of language at 3(h)(ii)(A) and the addition of language at chapter IV, 3 (h)(iii)(B), to be no less effective than the counterpart Federal regulations.

IV. Summary and Disposition of Comments

The Director solicited public comment on the proposed amendments and provided opportunity for a public hearing in the May 21, 1986 **Federal Register** (51 FR 18621). No comments were received, and a public hearing was not held because no one requested an opportunity to provide testimony.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment. This approval is contingent upon the State's promulgation of the proposed revisions in the identical form as submitted for OSM's review. The final rule is 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.

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

VII. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary of the Interior has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With the Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order No. 12291 for actions directly related to approval or

conditional approval of State regulatory programs. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rule will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For 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 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

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

2. Section 950.10 is amended by revising section 950.10 to read as follows:

950.10 State regulatory program approval.

The Wyoming permanent program as submitted on August 15, 1979 and as revised on October 23, 1979 and May 30, 1980, is approved effective November 26, 1980. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 261–5776,

(b) Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7756.

3. Section 950.15 is amended by removing paragraphs (i)(1)(ii) and (i)(1)(iii) and by adding paragraph (l) to read:

§ 950.15 Approval of regulatory program amendments.

* * * * *

(l) The following amendments to the Wyoming permanent regulatory program, as submitted to OSM on May 1, 1986, are approved effective January 29, 1991: Chapter VI, section 3(c)(ii)(C)(I), concerning coal mine waste pile lift thickness and dry density requirements; chapter IV, section 3(h)(iii)(A), concerning the deletion of the highwall elimination requirement; and chapter IV, section 3(h)(iii)(B), concerning the addition of highwall retention provisions.

[FR Doc. 91–2039 Filed 1–28–91; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3836–2]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa and Pima Counties; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces final EPA actions under the Clean Air Act (the Act) (42 U.S.C. 7401 et seq.) regarding the carbon monoxide (CO) State Implementation Plans (SIPs) for the Maricopa County, Arizona Urban Planning Area (Phoenix) and the Tucson, Arizona CO Air Planning Area (Pima County).

EPA is approving control measures previously proposed for approval for Pima County on August 10, 1988 (53 FR 30239) because they strengthen the existing SIP, specifically the demonstration of maintenance of the CO standard. EPA is also taking action to restore its approval of the control measures for the Maricopa and Pima CO nonattainment areas, originally approved by EPA on August 10, 1988 (53 FR 30220 and 53 FR 30224) and vacated by the U.S. Court of Appeal for the Ninth Circuit in *Delaney* v. *EPA*. These control measures, therefore, remain in effect as originally approved and are federally enforceable portions of the applicable implementation plans for Maricopa and Pima Counties.

EFFECTIVE DATE: These actions are effective on February 28, 1991.

ADDRESSES: Copies of the CO plans for Maricopa and Pima Counties and EPA's technical support document for the additional Pima County measures are available for public inspection during normal business hours at the following location. A reasonable fee may be charged for copy.

Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, California 94103 (415) 556–5152.

FOR FURTHER INFORMATION CONTACT:

Wallace D. Woo, Chief, State Liaison Section, A–2–2, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, California 94103 (415) 556–5152.

SUPPLEMENTARY INFORMATION:

A. Background

For a comprehensive description of the relevant requirements of the Act and EPA's past regulatory actions on the Maricopa and Pima CO SIPs, see the final rulemakings of August 10, 1988 (53 FR 30220 and 53 FR 30224).

EPA previously disapproved the CO attainment plans for Maricopa and Pima Counties on September 26, 1986 finding that the plans were inadequate to achieve the National Ambient Air Quality Standards (NAAQS) for CO and imposing a construction moratorium on major sources and major modifications to sources of CO in the two areas pursuant to section 110(a)(2)(I) of the Act (51 FR 33746).

On August 10, 1987 the U.S. District Court for the District of Arizona ordered EPA to promulgate a federal implementation plan (FIP) under section 110(c) of the Act for CO in the Maricopa and Pima County nonattainment areas. *McCarthy* v. *Thomas*, No. Civ 85–344 (D. Ariz. Aug. 10, 1984). The court order was the result of a citizen suit brought against EPA by the Arizona Center for Law in the Public Interest (ACLPI). In subsequent proceedings the court ordered EPA to promulgate a FIP by August 10, 1988 unless before that date Arizona submitted and EPA approved adequate state plans. The State submitted a number of revisions to the CO SIP for Arizona, and on August 10, 1988 EPA approved CO attainment plans for Maricopa (53 FR 30224) and Pima (53 FR 30220) Counties.

In the August 10, 1988 notices (53 FR 30220 and 30224), EPA gave final approval to the CO SIPs for the Maricopa and Pima Counties nonattainment areas, finding that the control measures and attainment demonstrations submitted by the State fully met the requirements of section 110 and part D of the Act. EPA also withdrew proposed sanctions and lifted the construction moratorium which had been imposed on September 23, 1986 (51 FR 33746).

Accompanying EPA's August 10, 1988 final approval was another notice (53 FR 30239) proposing approval of two measures which the state had submitted for the Pima County CO nonattainment area. These two measures were the state's oxygenated fuels program and the travel reduction ordinances adopted by Pima County jurisdictions. In its proposal EPA noted that the measures would strengthen the maintenance demonstration of the CO standard. Accordingly, after consideration of the public comments submitted, EPA is today taking final action to approve these two measures as proposed on August 10, 1988.

B. Ninth Circuit Opinion and Order

The Arizona Center for Law in the Public Interest (ACLPI) filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit challenging EPA's August 10, 1988 final actions. On April 11, 1990 the Ninth Circuit issued its amended opinion in *Delaney* v. *EPA*, 898 F. 2d 687 (9th Cir. 1990), finding that where the statutory attainment deadline has passed, the national ambient air quality standards must be attained, "as soon as possible," using "every available control measure." The court concluded that EPA arbitrarily and capriciously found that the Maricopa and Pima plans provided for sufficient control measures and demonstrated timely attainment. The court further concluded that EPA arbitrarily and capriciously approved the Maricopa plan because the plan failed to provide for adequate contingency and conformity provisions as required by EPA guidelines, 46 FR 7188 (January 22, 1981).

The court vacated EPA's approval of the Arizona plans because they do not contain sufficient control measures to attain the CO ambient air quality standard "as soon as possible." The court ordered EPA to promulgate federal implementation plans consistent with the court's opinion within six months. The plans must include contingency and conformity provisions in accordance with EPA guidelines. 898 F. 2d at 695.

C. Discussion

Pursuant to the Ninth Circuit's instructions in *Delaney* v. *EPA*, EPA is proposing, in a separate notice to promulgate a FIP for the Maricopa and Pima County CO nonattainment areas.

While the *Delaney* court vacated EPA's approval of the Arizona plans, EPA does not intend, nor does it consider that the court intended it, to vacate the control measures in the Maricopa and Pima plans which were previously approved by EPA (53 FR 30224, 30220). The court set aside EPA's approval of the plans for failure to include additional measures, beyond those included as part of the control strategy, rather than because the measures submitted by the State were unworthy of approval for their effect in strengthening the SIP. However, because the court's action had the effect of vacating EPA's approval of the individual control measures, EPA is restoring in this rulemaking its approval of all of the control measures which were in effect prior to the *Delaney* court's action. EPA does not believe it is necessary to publish a notice of proposed rulemaking on this action because it is merely restoring the measures previously approved after full notice and comment rulemaking.

D. Public Comment

EPA received three comments on its proposal to approve two additional control measures into the Pima County CO SIP. Comments were received on whether the travel reduction ordinances and oxygenated fuels programs were intended to apply to Pima County and whether the measures should be made federally enforceable SIP commitments.

In letters dated July 18 and 22, 1988, the Arizona Department of Environmental Quality (ADEQ) submitted the travel reduction ordinances and oxygenated fuels program as revisions to the Pima County CO SIP. Both the July 22, 1988 letter and an additional ADEQ letter of May 26, 1988 characterized the measures as commitments towards maintenance of attainment of the CO standard. In a May 2, 1988 letter, the Pima Association of Governments submitted the travel reduction ordinances to ADEQ and stated that the documents should be made part of the Pima County CO SIP. EPA interprets the representations of these agencies as indicating the State's intent to apply these measures to Pima County.

In addition, the agencies' letters evidence the State's intent to make the measures federally enforceable. With regard to the expressed concern of one commentor that Pima County may be bound by enforceable SIP commitments even if state or local law is changed, the State may submit, pursuant to section 110 of the Act, proposed SIP revisions to EPA in the event of such changes. Finally, it is noteworthy that the State did not comment adversely on EPA's proposal to include the measures as enforceable Pima County SIP commitments.

Chevron U.S.A., Inc., in addition to questioning the applicability of oxygenated fuels to Pima County, raised a number of additional issues relating to this measure. EPA addresses the major comments below.

First, Chevron claims that EPA lacks the legal authority under section 110(a)(2)(A) of the Act to approve the measure as providing for attainment of the CO standard since air quality monitoring demonstrates that Pima County is in attainment of the CO standard. Chevron further claims that EPA cannot make the finding relating to EPA's approval of fuels or fuel additive measures required pursuant to section 211(c)(4)(C) of the Act for approval of the measure for the same reason. Section 211(c)(4)(C) states that EPA may approve such measures only if a finding is made that the control is necessary to achieve the standard.

Pima County is currently designated as a nonattainment area for CO under section 107 of the Act. (See 40 CFR 81.303.) Under section 107, an area can be redesignated upon request of the State and EPA approval. To date, no action has been requested or taken with regard to Pima County's designation status. Therefore, regardless of any air quality monitoring results, Pima County remains a nonattainment area for CO until formally redesignated under section 107. As a result, Chevron's analysis of EPA's authority under both sections 110 and 211 of the Act are without merit. Furthermore, with regard to section 211(c)(4)(C), EPA has concluded that the finding is required only when federal pre-emption has occurred. Under section 211(c)(4)(A), State regulation of motor vehicle fuels or fuel additives is allowed unless (1) EPA has made a finding published in the **Federal Register**, that no fuel related control or prohibition is necessary for that fuel or additive, or (2) EPA has prescribed by regulation under 211(c)(1) a control or prohibition applicable to a fuel or fuel additive regulated by the State that is different from the State control or prohibition. Neither form of pre-emption has occurred in this case. For an extended discussion of EPA's authority to prescribe and enforce an oxygenated fuels program under section 211(c)(4), see 53 FR 30240–30241.

Chevron also challenges EPA's approval of the oxygenated fuels measure on the ground that it is not necessary for maintenance of the CO standard under section 110 because EPA has already approved a maintenance program for Pima County at 53 FR 30220. In *Union Electric Co.* v. *EPA*, 427 US 246 (1976), the U.S. Supreme Court held that the criterion of section 110(a)(2)(B) that a SIP contain control measures "as may be necessary" to attain the NAAQS

does not preclude a State from submitting a plan more stringent than federal law requires. In so holding, the Court found additional support in section 116 of the Act which provides that States may adopt emission standards stricter than national standards. 427 US 246, at 263–264. EPA believes the Court's reasoning applies equally to maintenance measures and therefore rejects Chevron's argument.

Finally, Chevron challenges EPA's approval of the oxygenated fuels measure as not complying with the Prevention of Significant Deterioration (PSD) requirements of the Act. Chevron argues that EPA cannot approve any measure that arguably increases NO_x emissions until Arizona submits and EPA approves a NO_x PSD plan for Pima County. However, the majority of the Act's PSD requirements apply only to major stationary sources, not to mobile source emission controls such as an oxygenated fuels program. The only PSD requirement that would apply to this SIP revision is the requirement that after any baseline concentration has been established, all SIP revisions must include a demonstration that the revision will not cause or contribute to a violation of the applicable PSD increment. 40 CFR 51.166(a)(2). EPA did promulgate NO_x increments on October 17, 1988. However, EPA specifically provided in that promulgation that the increments were not self executing, and that no area would have an applicable increment until the state adopted and EPA approved a NO_x PSD plan for the area. See 53 FR 40656, 40658. EPA has not yet approved a NO_x PSD plan for Arizona. Thus, until EPA does approve such a plan, there is no applicable NO_x increment in Pima County. EPA is therefore free to approve SIP revisions in Pima County without requiring a demonstration respecting impacts on such increment.

E. Final Action

EPA is today taking final action to restore its original approval of all of the control measures in the CO SIPs for the Maricopa and Pima County nonattainment areas previously approved by EPA and vacated by the Ninth Circuit in *Delaney*.

EPA is also taking final action today to approve the oxygenated fuels program and the travel reduction ordinances for Pima County jurisdictions, as proposed on August 10, 1988 because they strengthen the SIP by providing extra assurance that the plan will attain and maintain the CO standard.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d), this approval is effective 30 days from publication of today's notice.

F. Regulatory Process

Under Executive Order 12291, this action is not "major." It has not been submitted to the Office of Management and Budget for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. Regarding the measures EPA is restoring into the SIP, these measures will have no impact on any entities beyond the impact of the previously approved SIPs. Regarding the two new measures which are being approved for the Pima nonattainment area, EPA does not anticipate that either measure will have a significant effect on the small entities referenced in 5 U.S.C. 605(b).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for action to any state implementation plan. Each action shall be considered separately in light of specific legal, technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of the date of this publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: September 20, 1990.

William K. Reilly,

Administrator.

Subpart D of part 52 of chapter I, title 40 of the Code of Federal Regulations is being amended to read as follows:

Subpart D—Arizona

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.120 paragraphs (c)(63), (65)(i)(A)(*2*) and (66)(i)(D) are being amended to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(63) The following amendments to the plan were submitted by the governor's designee on May 26, 1988:

(i) Incorporation by reference.

(A) Travel reduction ordinances for Pima County: Inter governmental Agreement (IGA) between Pima County, City of Tucson, City of South Tucson, Town of Oro Valley and Town of Marana, April 18, 1988; Pima County Ordinance No. 1988–72, City of Tucson ordinance No. 6914, City of South Tucson Resolutions No. 88–01, 88–05, Town of Oro Valley Resolutions No. 162, 326 and 327, Town of Marana Resolutions No. 88–06, 88–07 and Ordinance No. 88.06.

(65) * * *

(i) * * *

(A) * * *

(*2*) House Bill 2206 section 6 which added, under Arizona Revised Statutes, title 28, chapter 22, new sections 28–2701 through 28–2708, and section 13 which added, under Arizona Revised Statutes, title 41, chapter 15, Article 6 new sections 41–2125A and 41–2125B. (Oxygenated fuels program for Pima County.)

(66) * * *

(i) * * *

(D) Commitment in the July 22, 1988 submittal letter to apply the oxygenated fuels program of the July 18, 1988 submittal to Pima County.

[FR Doc. 91–805 Filed 1–28–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–486; RM–7379]

Radio Broadcasting Services; Asbury, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 278A to Asbury, Missouri, in response to a petition filed by William Bruce Wachter. See 55 FR 46837, November 7, 1990. The coordinates for Channel 278A are 37–16–24 and 94–36–24.

DATES: Effective March 11, 1991; the window period for filing applications will open on March 12, 1991, and close on April 11, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report