cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 24, 1990, (53 FR 41974) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance Program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low- and moderate-income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.0 percent per annum with respect to mortgages insured on or after August 12, 1991.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 9.0 percent per annum with respect to mortgages insured after August 12, 1991.

* * * * *

Dated: August 12, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-20226 Filed 8-22-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8353]

RIN 1545-AC09

Information With Respect to Certain Foreign-Owned Corporations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8353), which were published Wednesday, June 19, 1991, (56 FR 28056). The regulations relate to information that must be reported and records that must be maintained under section 6038A of the Internal Revenue Code.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after July 10, 1989, except as follows:

§ 1.6038A-1 (a), (b), (e)(2), (g) through (n)—December 10, 1990
§ 1.6038A-3—March 20, 1990
§ 1.6038A-6—November 5, 1990
§ 1.6038A-7—December 10, 1990

FOR FURTHER INFORMATION CONTACT: Carol P. Tello (202-377-9493) or Grace Perez-Navarro (202-287-4851), (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are necessary to provide appropriate guidance for affected reporting corporations and related parties. The regulations affect any reporting corporation (that is, certain domestic corporations and foreign corporations) as well as certain related parties of the reporting corporation.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8353), which were the subject of FR Doc. 91-14459, is corrected as follows:

Par. 1. On page 28057, column two, fifth full paragraph, second line from bottom of that paragraph, the phrase "§ § 1.6038A-3 and 1.6038-5 has been" is corrected to read "§ § 1.6038A-3 and 1.6038A-5 has been".

Par. 2. On page 28058, column one, under the heading "Record Maintenance", paragraph three, line seven, the abbreviation "U.S." is corrected to read "U.S.".

Par. 3. On page 28061, column three, in § 1.6038A-1, paragraph (c)(4), line seven, the following sentences are added after the word "corporation.":

An examination may be reopened if the statute of limitations period for that taxable year has not expired. A taxable year may not be reopened under section 6038A for examination purposes if the taxable year is open under section 6511 only for purposes of the carryback of net operating losses or net capital losses.

Par. 4. On page 28066, column two, in § 1.6038A-3, paragraph (a)(3), *Example 3,* line 19, the phrase "are not subject to the maintenance" is corrected to read "are not subject to the record maintenance".

Par. 5. On page 28069, column three, in § 1.6038A-3, paragraph (c)(7)(i), line one, the phrase "*U.S. connected products or*" is corrected to read "*U.S.-connected products or*".

Par. 6. On page 28071, column one, in § 1.6038A-3, paragraph (e)(2)(iii), *Example,* line seven, the phrase "paragraph 3(c)(5) of this section, Segment 1" is corrected to read "paragraph (c)(5) of this section, Segment 1".

Par. 7. On page 28074, column one, in § 1.6038A-5, paragraph (b)(1), under the heading "**AUTHORIZATION OF AGENT**", under the first mention of the word "(Date)", line two, the phrase "fiduciary on behalf of foreign related party: I", is corrected to read "fiduciary on behalf of a foreign related party: I".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-20170 Filed 8-22-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218-AA57

[Docket No. S-207]

Safety Standards for Stairways and Ladders Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; technical amendments.

SUMMARY: This rule amends the Standard for Stairways and Ladders Used in the Construction Industry, which was recently revised and published in the **Federal Register** on November 14, 1990 (55 FR 47660). These changes clarify some inadvertent errors in the requirements for stairrails and handrails and in the requirements for spacing ladder rungs.

EFFECTIVE DATE: August 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Information and Public Affairs, room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION: This document contains amendments to correct the revised standard for stairways and ladders used in the construction industry, which was published on November 14, 1990 (55 FR 47660). Two errors were introduced into the final rule during the process of editing the document for publication. In the first instance, in § 1926.1052(c)(1), OSHA inadvertently blurred the distinction between the stairrail and handrail requirements, leaving out the requirement for at least one handrail for stairways which had been contained in the proposal. (The proposal was published on November 25, 1986 at 51 FR 42750.) In the second instance, in § 1926.1053(a)(3), a method of measuring the rung spacing for individual rung ladders was inadvertently omitted from the final rule when OSHA consolidated two measuring methods contained in the proposal into one paragraph in the final rule.

Amendment to 29 CFR 1926.1052(c)(1)

Proposed § 1926.1052(c)(1) required employers with stairways having four or more risers to equip those stairways with at least one handrail (paragraph (c)(1)(i)). The proposal also required one stairrail system along each unprotected stairway side or edge (paragraph (c)(1)(ii)). Proposed paragraph (c)(1) also contained a note that stated stairrails which satisfied proposed § 1926.1052(c)(7) could also serve as handrails. No commenters objected to the provisions of proposed paragraph (c)(1).

Based on input from the Advisory Committee on Construction Safety and Health and on the Agency's field experience, OSHA decided to revise proposed paragraph (c)(1) in the final rule, so that the stairrail and handrail requirements would apply when stairways have four or more risers or rise more than 30 inches, whichever is less. The Agency made some other revisions to the proposed paragraph that were intended to be editorial in nature. In particular, OSHA consolidated the requirements of proposed paragraphs (c)(1)(i) and (c)(1)(ii) into a single sentence and incorporated the note from the proposal as the second sentence of the provision.

As revised, paragraph (c)(1) read as follows: "Stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, shall be equipped with at least one handrail and one stairrail system along each unprotected side or edge. However, when the top edge of a stairrail system also serves as a handrail, paragraph (c)(7) of this paragraph applies." On November 14, 1990, OSHA promulgated revised paragraph (c)(1) as part of the final rule for the subpart X rulemaking.

The Agency has determined that paragraph (c)(1) of the final rule does not accurately reflect the requirements OSHA both proposed and intended to promulgate as a final rule for stairrails and handrails. The final rule incorrectly indicates that employers are required to provide handrails on stairways only where there is an unprotected side or edge. Handrails are used to protect employees from slipping while climbing stairways, rather than to protect them from falling off the edge or side of a stairway. Therefore, at least one handrail is needed on each stairway covered by paragraph (c)(1), whether or not it has an unprotected side or edge. On the other hand, the Agency has consistently considered the presence of an unprotected side or edge to be the basis for requiring a stairrail system, because a stairrail system is used to protect employees from falling off the side or edge of a stairway. OSHA inadvertently blurred the distinction between the stairrail and handrail requirements when the Agency combined the proposed requirements in a single provision of the final rule. The error does not appear in the preamble to the final rule, which states (55 FR at 47667) that "* * * stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, * * * (shall) * * * be equipped with one stairrail system along each unprotected side or edge, and with at least one handrail."

To correct the error, OSHA is returning to the language of the proposed rule, setting out the handrail and stairrail requirements separately. In this way, the Agency will clearly state that all stairways regulated under § 1926.1052(c)(1) must have at least one handrail.

In addition, OSHA is redesignating the sentence of paragraph (c)(1) of the final rule which covers stairrail systems that also serve as handrail systems to be a note to paragraph (c)(1).

Amendment to 29 CFR 1926.1053(a)(3)

Proposed § 1926.1053(a)(3) set rung, cleat and step spacing requirements for ladders. Proposed paragraph (a)(3)(i) required that rungs, cleats and steps of portable and fixed ladders be spaced not less than six inches apart, nor more than 12 inches apart, as measured along the ladder siderails. Proposed paragraph (a)(3)(ii) required that rungs, cleats and steps of individual step or rung ladders be spaced not less than six inches apart, nor more than sixteen and a half inches apart, as measured between centerlines of the rungs, cleats and steps.

OSHA decided, based on the record developed in the subpart X rulemaking, including comments received and the pertinent consensus standards, to revise the proposed rung, cleat and step spacing requirements. In particular, the Agency decided to delete proposed paragraph (a)(3)(ii) and to require that rungs, cleats and steps on all fixed ladders (including individual step or rung ladders) be spaced not less than 10 inches apart, nor more than 14 inches apart. OSHA consolidated the requirements for fixed ladders in paragraph (a)(3)(i). In addition, the Agency decided that it was appropriate to revise proposed paragraph (a)(3) by adding separate spacing requirements for step stools (paragraph (a)(3)(ii)) and extension trestle ladders (paragraph (a)(3)(iii)).

As published on November 14, 1990, paragraph (a)(3) reads as follows:

(i) Rungs, cleats, and steps of portable ladders (except as provided below) and fixed ladders shall be spaced not less than 10 inches (25 cm) apart, nor more than 14 inches

(36 cm) apart, as measured along the ladder's side rails.

(ii) Rungs, cleats, and steps of step stools shall not be not less than 8 inches (20 cm) apart, nor more than 12 inches (31 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(iii) Rungs, cleats, and steps of the base section of extension trestle ladders shall not be less than 8 inches (20 cm) nor more than 18 inches (46 cm) apart, as measured between center lines of the rungs, cleats, and steps. The rung spacing on the extension section of the extension trestle ladder shall be not less than 6 inches (15 cm) nor more than 12 inches (31 cm).

OSHA has determined that paragraph (a)(3)(i) does not accurately reflect the requirements that the Agency both proposed and intended to promulgate for "individual-rung/step ladders" (as defined in § 1926.1050 of the final rule). In particular, the final rule was intended to require that the spacing for all fixed ladders, including individual-rung/step ladders, be measured in the same way (along the side rails), even though individual-rung/step ladders do not have side rails. The Agency notes that proposed paragraph (a)(3)(ii) took this circumstance into account appropriately, by requiring that the spacing be measured between the center lines of the rungs, cleats, and steps.

To correct the error, OSHA is revising paragraph (a)(3)(i) of the final rule to require that the spacing for all fixed ladders be measured between the center lines of the rungs, cleats, and steps. In this way, the Agency will provide proper guidance to employers who use individual-rung/step ladders, without substantively changing the requirements for other fixed ladders. In addition, OSHA is adding language to paragraph (a)(3)(i) of the final rule to indicate clearly that individual-rung/step ladders are covered by that provision.

As set out above, paragraph (a)(3)(iii) of the final rule indicates how the spacing of rungs, cleats, and steps of the base section of extension trestle ladders is to be measured, but does not indicate how the spacing of the extension section is to be measured. OSHA had intended that the required spacing in the extension section, like that in the base section, be measured between the center lines of the rungs, cleats, and steps. To correct this oversight, the Agency is adding language to paragraph (a)(3)(iii) of the final rule that requires spacing to be measured accordingly.

List of Subjects in 29 CFR Part 1926

Construction safety; Construction industry; Ladders and scaffolds; Occupational safety and health; Protective equipment; Safety.

Authority: This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911, subpart X of 29 CFR part 1026 is amended as set forth below.

Signed at Washington, DC, this 17th day of July, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

1. The authority citation for subpart X of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911.

2. Subpart X is amended as follows:

§ 1926.1052 [AMENDED]

The text of paragraph (c)(1) of § 1926.1052 is revised to read as follows:

* * * * *

(c)(1) Stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, shall be equipped with:

(i) At least one handrail; and

(ii) One stairrail system along each unprotected side or edge.

Note: When the top edge of a stairrail system also serves as a handrail, paragraph (c)(7) of this section applies.

* * * * *

§ 1926.1053 [AMENDED]

The text of paragraph (a)(3) of § 1926.1053 is revised to read as follows:

(a) * * *

(3)(i) Rungs, cleats, and steps of portable ladders (except as provided below) and fixed ladders (including individual-rung/step ladders) shall be spaced not less than 10 inches (25 cm) apart, nor more than 14 inches (36 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(ii) Rungs, cleats, and steps of step stools shall be not less than 8 inches (20 cm) apart, nor more than 12 inches (31 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(iii) Rungs, cleats, and steps of the base section of extension trestle ladders shall not be less than 8 inches (20 cm) nor more than 18 inches (46 cm) apart, as measured between center lines of the rungs, cleats, and steps. The rung spacing on the extension section of the extension trestle ladder shall be not less than 6 inches (15 cm) nor more than 12 inches (31 cm), as measured between center lines of the rungs, cleats, and steps.

* * * * *

[FR Doc. 91–17460 Filed 8–22–91; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

30 CFR Part 901

Alabama Regulatory Program; Regulatory Reform; Correction

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

ACTION: Final rule; correction.

SUMMARY: OSM is correcting two errors in the final rule notice approving Alabama Program Amendment Number AL–005B published on Wednesday, July 3, 1991 (56 FR 30502). Alabama's proposed revision at section 880–X–9C–.03(7) of the Alabama Surface Mining Commission Rules (ASMCR) is approved. The required amendment to include certain definitions relating to terms and conditions of bonds is removed as these definitions are addressed at section 880–X–2A–.06 of the ASMCR. Alabama's proposed revision at section 880–X–10D–.17 of the ASMCR is approved. The required amendment to address the treatment of point-source discharge of water is removed as this provision is addressed at section 880–X–10D–.13(1)(a) of the ASMCR.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, 135 Gemini Circle, suite 215, Birmingham, Alabama 35209; Telephone: (205) 290–7282.

SUPPLEMENTARY INFORMATION: On page 30507, second column, § 901.16, paragraphs (l) and (m) are removed.

Dated: August 15, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 91–20231 Filed 8–22–91; 8:45 am]

BILLING CODE 4310–05–M

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 its decision to approve, with certain exceptions and additional requirements, and defer decision on various parts of a proposed 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 proposed amendment consists of changes to Utah's rules relating to definitions, termination of jurisdiction, administrative procedures for permitting, permit application requirements, vegetation information guidelines, revegetation success standards, land use, air quality, engineering, hydrology, areas unsuitable for coal mining and reclamation operations, blaster certification, coal exploration, variance from backfilling to approximate original contour for steep-slope mining, permit renewals, cessation orders, and individual civil penalties. The amendment revises the Utah rules to be consistent with the corresponding Federal regulations, improves operational efficiency, and incorporates the additional flexibility afforded by the revised Federal regulations.

EFFECTIVE DATE: August 23, 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 Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Utah Program

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 July 3, 1990 (administrative record No. UT-570), Utah submitted a proposed amendment to its program pursuant to SMCRA. Utah submitted the proposed amendment in response to (1) the May 11 and November 27, 1989, letters (administrative record Nos. UT-507 and UT-542) that OSM sent to Utah in accordance with 30 CFR 732.17(c), (2) the November 9, 1989, issue letter (administrative record No. UT-538) that OSM sent to Utah, and (3) the required program amendments at 30 CFR 944.16 that OSM placed on the Utah program in the April 12, 1990, final rule **Federal Register** notice (55 FR 13773). The provisions of Utah's Coal Mining Rules that Utah proposes to amend are:

R614-100-200 Definition of "Fragile Lands," "Owned or Controlled," "Road," "Unwarranted Failure to Comply," and "Valid Existing Rights"
R614-100-415 Coal Exploration
R614-100-450 through 452 Termination of Jurisdiction
R614-103-220, 221, and 222 Areas Unsuitable for Coal Mining and Reclamation Operations
R614-105-443 Blaster Certification
R614-201-400 through 434 Coal Exploration—Requirements for Commercial Sale
R614-300-112 Administrative Procedures—Permitting
R614-300-132 Review of Compliance
R614-300-148 Permit Conditions
R614-300-160 through 170 Improvidently Issued Permits
R614-301-111 through 113 Permit Application Requirements—General Contents
R614-301-356 and 357 Revegetation—Performance Standards
R614-301-356 Vegetation Information Guidelines
R614-301-411 Premining Land Use Information
R614-301-424 Air Quality
R614-301-521 Engineering—Operation Plan
R614-301-525 Subsidence
R614-301-526 Mine Facilities—Plans and Drawings
R614-301-527 Transportation Facilities
R614-301-528 Engineering—Coal Mine Waste
R614-301-533 Engineering—Impoundments
R614-301-534 Engineering—Roads
R614-301-542 Narratives, Maps and Plans for Reclamation Plan
R614-301-553 Backfilling and Grading
R614-301-731 Hydrology—General Requirements
R614-301-733 Hydrology—Operation Plan
R614-301-742 Hydrology—Sediment Control Measures
R614-301-743 Hydrology—Impoundments General Requirements
R614-301-746 Coal Mine Waste—Impounding Structures
R614-302-271 Variances From Backfilling to Approximate Original Contour
R614-303-232 Permit Renewals
R614-400-319 Cessation Orders
R614-402-120 Inspection and Enforcement—Individual Civil Penalties
R614-402-210 and 220 Assessment of Individual Civil Penalties
R614-402-310 and 320 Amount of Individual Civil Penalties
R614-402-410 Procedures for Assessment of Individual Civil Penalties

OSM announced receipt of the proposed amendment in the July 23, 1990, **Federal Register** (55 FR 29861) 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 (administrative record No. UT-574). The public comment period closed on August 22, 1990. The public hearing, scheduled for August 17, 1990, was not held because no one requested an opportunity to testify.

On November 26, 1990, Utah withdrew proposed rules R614-301-731.212 and R614-301-731.223, which concern the monitoring of surface and ground water (administrative record No. UT-601).

III. Director's Findings

After a thorough review, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that, with certain exceptions, the proposed amendment, as submitted by Utah on July 3, 1990, and revised by it on November 26, 1990, meets the requirements of SMCRA and 30 CFR chapter VII as discussed below.

1. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Federal Regulations

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

R614–100–200 (30 CFR 773.5), definitions of "owned or controlled" and "owns or controls" and (30 CFR 762.5) "fragile lands;"

R614–201–400 through 432, 432.100 through .300, 433, and 434 (30 CFR 772.14 (a) and (b)), coal exploration;

R614–300–112.500 (30 CFR 773.11(a)) administrative procedures for permitting;

R614–300–132.100, .120, .200, and 300 (30 CFR 773.15(b)(1)), review of compliance;

R614–300–148, 148.100, and .200 (30 CFR 773.17(i)), permit conditions;

R614–300–164, 164.100 through .300, and 170 (30 CFR 773.21), improvidently issued permits;

R614–301–112.200 through .420 (30 CFR 778.13(b)), permit application requirements, identification of interests;

R614–301–112.900 (30 CFR 778.13(i)), permit application requirements, updating ownership and control interests;

R614–301–113.300 through .310, and .400 (30 CFR 778.14 (c) and (d)), violation information;

R614–301–356.232 and R614–301–357.300 (30 CFR 816.116(b)(3)(ii) and 816.116(c)(4)), revegetation;

R614–301–521.170 and .180 (30 CFR 780.37, 784.24, 780.38, and 784.30), roads and support facilities;

R614–301–526.220 (30 CFR 780.38), support facilities;

R614–301–527.200, .230, and .240 (30 CFR 780.37, 816.150(e), and 817.150(e)), roads and support facilities;

R614–301–533.100 (30 CFR 816.49(a)(3) and 817.49(a)(3)), impoundments;

R614–301–534.130 through .150 (30 CFR 780.37(a)(6), 816.150(b), 817.150(b), 816.151(b), and 817.151(b)), roads;

R614–301–542.620 and .640 (30 CFR 816.150(f) (2) and (3) and 817.150(f) (2) and (3)), roads and support facilities;

R614–301–733.210 (30 CFR 780.25(c) and 784.16(c)), permanent and temporary impoundments;

R614–301–742.222, .223, and .225 (30 CFR 816.46(c)(2) and 817.46(c)(2)), siltation structures;

R614–301–742.412 and .423 (30 CFR 816.150(d), 817.150(d), 816.151(d), and 817.151(d)), roads and support facilities;

R614–301–743.130, .131, .132, and .200 (30 CFR 816.49(a) and 817.49(a)), impoundments;

R614–301–746.312 (30 CFR 816.84(b)(2) and 817.84(b)(2)), coal mine waste impounding structures;

R614–303–232.500 (30 CFR 773.11(a)), renewal of permits for reclamation;

R614–400–319 (30 CFR 843.11(g)), state enforcement provisions; and

R614–402–120, 210, 220, 310, 320, and 410 (30 CFR 846), Individual Civil Penalties.

Because the proposed revisions to these Utah rules are substantively identical to the corresponding Federal regulations, the Director (1) finds that these Utah rules are no less effective than the corresponding Federal regulations and (2) is approving these rules.

2. Revisions to Utah's Rules That Were Previously Not Approved

The Director previously did not approve certain provisions of Utah's proposed rules (55 FR 13773, 13775, April 12, 1990). Specifically, the Director did not approve the first definition of "fragile lands" at R614–100–200 (finding No. 2(a), 55 FR 13773, 13774); the phrase "which removes less than 250 tons" at R614–100–415 (finding No. 3, 55 FR 13773, 13776); the rule R614–301–411.145 "[t]he exceptions set forth in R614–103–235 will apply to all of the limitations on adversely affecting certain lands as described in R614–301–411.140" (finding No. 10, 55 FR 13773, 13778); and the phrase "[t]o the extent required under Utah Law" at R614–301–525.160 and R614–301–525.232 (finding No. 12, 55 FR 13773, 13779).

Although not required in the April 12, 1990, **Federal Register** notice, Utah has in this proposed amendment deleted the provisions discussed above. Removal of the provisions will avoid confusion on the part of the public that may not be aware of the April 12, 1990, **Federal Register** notice.

3. R614–100–200, Definitions

(a) *Road.* With one exception, Utah proposes a definition for "road" at R614–100–200 that is substantively identical to the corresponding Federal definition for "road" at 30 CFR 701.5. The exception is that Utah's proposed definition indicates that the term "road" "may not include public roads as determined on a site specific basis."

Subsequent to the submission of this amendment, Utah, on March 1, 1991, submitted (1) proposed rules at R614–100–200 for the definitions of "road" (the same as identified above) and "public road" and (2) a policy statement detailing how Utah would determine which access and haul roads for coal mining and reclamation operations are subject to permitting (administrative record No. UT–610).

The Director is deferring decision on Utah's July 3, 1990, proposed definition of "road" at R614–100–200 until such time as he makes a decision of Utah's March 1, 1991, proposed amendment. These decisions are forthcoming.

(b) *Valid existing rights (VER).* The Director previously deferred decision on subsections (a) and (d)(ii) of Utah's proposed definition of VER at R614–100–200 to allow Utah the opportunity to submit information that demonstrated (1) that the proposed provisions would be as effective as the "good faith all permits" test in meeting the requirements of SMCRA and (2) the appropriateness and necessity of a "takings" test under Utah law. The Director also at 30 CFR 944.16(a) required that Utah amend its definition of VER at R614–100–200 to limit claims for VER under the "needed for and adjacent to" test to those lands for which the applicant had obtained the requisite property rights as of August 3, 1977. For a detailed discussion of these decisions, see finding No. 2(d) of the April 12, 1990 **Federal Register** notice (55 FR 13773, 13775–13776).

Utah in this proposed amendment (1) did not take the opportunity to submit information that demonstrated that the proposed definition would be as effective as the "good faith all permits test" and (2) proposes at subsections (a) and (d)(ii) of the definition of VER to delete the "takings" test.

The Director finds that Utah's proposed deletion of the "takings" test at subsections (a) and (d)(ii) of the definition of VER is consistent with the suspension of the "takings" test provisions (November 20, 1986, 51 FR 4106) of the September 14, 1983, Federal regulations (48 FR 41312) at 30 CFR 761.5(a) and (d)(2). OSM suspended these provisions in response to PSMRL, Round II. The Director also finds that Utah's proposed deletion is consistent with OSM's reinstated March 13, 1979, regulation at 30 CFR 761.5(a) (51 FR 41952, 41954, November 20, 1986).

Utah also proposes to recodify subsection (d) of the definition of VER as subsection (c) and in recodified subsection (c) to limit claims for VER under the "needed for and adjacent to" test to those lands for which the applicant obtained the requisite property rights to the coal prior to August 3, 1977. The Director finds that Utah's proposed revision for subsection (c) satisfies the Director's required amendment at 30 CFR 944.16(a).

Based upon the above discussions, the Director finds, with one exception which is discussed below, that Utah's proposed definition of VER at R614–100–200 is no less effective than the corresponding Federal definition of VER at 30 CFR 761.5. Therefore, the Director is approving, with one exception, Utah's proposed definition of VER at R614–100–200 and removing the required program amendment at 30 CFR 944.16(a).

The exception concerns recodified subsection (c)(ii) of the definition of VER. In deleting this takings test from the definition, Utah proposes to retain the incomplete sentence "the prohibition caused by 40–10–24 of the Act." In the context of the definition, this phrase makes no sense. Therefore, the Director is not approving the phrase "the prohibition caused by 40–10–24 of the Act" in the proposed definition of VER at R614–100–200 and is requiring Utah to remove this phrase.

(c) *Unwarranted failure to comply.* The Director previously required at 30

CFR 944.16(b) that Utah amend its definition of "unwarranted failure to comply" at R614–100–200 to include the situation where a permittee fails to abate a violation (finding No. 2(e); 55 FR 13773, 13776; April 12, 1990).

At R614–100–200 , Utah proposes in this amendment to define "unwarranted failure to comply" to mean "the failure of the permittee to prevent the occurrence of any violation of the State Program or any permit condition due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care." This proposed definition is substantively identical to the Federal definition of "unwarranted failure to comply" at 30 CFR 843.5. Therefore, the Director finds that the proposed definition of "unwarranted failure to comply" at R614–100–200 is no less effective than the corresponding Federal definition of "unwarranted failure to comply" at 30 CFR 843.5. The Director is approving the proposed definition of "unwarranted failure to comply" at R614–100–200 and is removing the required amendment at 30 CFR 944.16(b).

4. R614–100–450 through R614–100–452, Termination of Jurisdiction

Utah's proposed rules at R614–100–450 through R614–100–452 concerning termination of jurisdiction that are substantively identical to the Federal regulations at 30 CFR 700.11(d). However, in National Wildlife Fed'n, the court held that the Federal regulations were in conflict with SMCRA. More specifically, the court held that 30 CFR 700.11(d) is inconsistent with sections 521 (a)(1) and (a)(2) of SMCRA which require the Secretary to correct violations of the Act without limitation. Accordingly, the court remanded "this rule to the Secretary to be withdrawn or revised" (*Id.*, mem. op. at 86).

On June 3, 1991, (56 FR 25036, 25037) OSM suspended the above Federal regulation. OSM may not, because of the court's remand, use the regulation at 30 CFR 700.11(d) in evaluating the sufficiency of Utah's proposed rule. Accordingly, OSM evaluated the proposed amendments based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based upon (1) the courts' finding that 30 CFR 700.11(d) is contrary to the provisions of SMCRA, (2) the court's specific instruction to the Secretary to withdraw or revise 30 CFR 700.11(d), and (3) because the Utah rules have the same deficiencies as the court identified for OSM's regulation, the Director finds that Utah's proposed rules at R614–100–450 through 452 include requirements that are less stringent than sections 521 (a)(1) and (a)(2) of SMCRA. Therefore, the Director is not approving Utah's proposed rules at R614–100–450 through 452 concerning termination of jurisdiction. The Director will, pursuant to 30 CFR 732.17(c), notify Utah of any needed changes resulting from the court's decision.

5. R614–103–220, 221, and 222, Areas Unsuitable for Coal Mining and Reclamation Operations

Utah proposes a rule at R614–103–220 that the authority to make determinations of unsuitability on Federal lands is reserved to the Secretary "pursuant to Section 552(a) of the Federal Act" (SMCRA). The correct citation is section 523(a) of SMCRA. With the exception of the incorrect citation, the Director finds that Utah's proposed rule at R614–103–220 is consistent with section 523(a) of SMCRA, which specifies that the Secretary is responsible for designating Federal lands as unsuitable for mining. The Director is approving Utah's proposed rule at R614–103–220 but is requiring Utah to amend its rule to cite section 523(a) of SMCRA.

Utah proposes rules at R614–103–221 and R614–103–222 addressing determinations as to whether operators have VER for mining operations respectively on Federal and non-Federal lands. These proposed rules reference the VER determination sections of the approved State-Federal cooperative agreement for Federal lands at 30 CFR 944.30. As proposed, rule R614–103–221 states that VER determinations on Federal lands "will be performed in a manner consistent with the terms of a cooperative agreement between the Secretary and Utah pursuant to section 523(c) of the Federal Act" (SMCRA). Rule R16–103–222 states that VER determinations on non-Federal lands which affect adjacent Federal lands "will be performed in a manner consistent with the terms of the cooperative agreement referenced in R614–103–221." Utah's proposed rules add clarity to the State program, and they are not inconsistent with the corresponding Federal regulations at 30 CFR 740. Therefore, the Director is approving Utah's proposed rules at R614–103–221 and R614–103–222.

6. R614–105–443, Administrative Procedures for Blaster Training, Examination, and Certification

The Director previously required at 30 CFR 944.16(d) that Utah further amend R614–105–440.441 to require that, upon notice of revocation of a blaster certificate, a certified blaster immediately surrender to Utah the revoked certificate (finding No. 8; 55 FR 13773, 13778; April 12, 1990). Utah proposes in this amendment a rule at R614–105–443 that is substantively identical to the corresponding Federal regulation at 30 CFR 850.15(b)(3). Therefore, the Director finds that Utah's proposed rule at R614–105–443 is no less effective than the corresponding Federal regulation at 30 CFR 850.15(b)(3). The Director is approving the proposed rule and is removing the required amendment at 30 CFR 944.16(d).

7. R614–300–160 through 163.400, Improvidently Issued Permits

Utah proposes rules at R614–300–160 through 163.400, concerning improvidently issued permits, that are substantively identical to the corresponding Federal regulations at 30 CFR 773.20. These Federal regulations are written in general terms, but the preamble for them states that the State regulatory program must include specific violations review criteria governing the specific unabated violations, delinquent penalties, and fees and ownership and control relationships which will be used in determining whether an improvidently issued permit exists (54 FR 18438, 18840–18441, April 28, 1989). Utah proposes rules at R614–300–160 through R614–300–163.400 that do not include such violations review criteria. Therefore, the Director finds that Utah's proposed rules at R614–300–160 through R614–300–163.400 are less effective than the corresponding Federal regulations at 30 CFR 773.20. The Director is approving Utah's proposed rules at R614–300–160 through R614–300–163.400 but is requiring Utah to amend these rules, or to otherwise amend its program, to include State-specific counterparts to the Federal violations review criteria listed in the April 28, 1989 **Federal Register** (54 FR 18438, 18440–18441).

8. R614–301–111.400, Identification of Interests and Compliance Information

Utah proposes a rule at R614–301–111.400 requiring mine permit applicants to submit the information concerning identification of interest and compliance information "in a format prescribed by the state program."

The corresponding Federal regulation at 30 CFR 778.13(j) requires, in part, that the applicant submit such information "in any prescribed OSM format that is issued." The preamble to the Federal regulation states that the purpose for this requirement is to increase efficiency of data entry and processing in the

Applicant/Violator System (AVS), and that use of an issued standard form "will be required regardless of whether the permit application is filed with OSM or a State regulatory authority" (54 FR 8982, 8985, March 2, 1989).

As proposed, Utah's rule does not require the applicant to submit the information in the OSM-prescribed format. Therefore, the Director finds that Utah's proposed rule at R614–301–111.400 is less effective than the corresponding Federal regulation at 30 CFR 778.13(j). The Director is approving Utah's proposed rule at R614–301–111.400 but is requiring Utah to amend R614–301–111.400, or otherwise amend its program, to require permit applicants to submit AVS information in the OSM-prescribed format.

9. R614–301–356.231, Stocking and Planting Arrangements for Trees and Shrubs

Utah proposes a rule at R614–301–356.231 requiring that, for areas to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products, the Division of Oil, Gas and Mining (Division) specify the minimum stocking and planting arrangements for trees and shrubs. Utah proposes that these stocking and planting arrangements be based on local and regional conditions after consultation with and approval by State agencies responsible for the administration of forestry and wildlife programs. Utah further proposes that consultation and approval may occur on either a programwide or a permit-specific basis.

The language of Utah's proposed rule is substantively identical to the language of the corresponding Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i). However, Utah has neither in this proposed rule nor in its Vegetation Information Guidelines specified (1) the minimum stocking and planting arrangements for woody plants and (2) whether consultation with Utah forestry and wildlife agencies would be done on a programwide or permit-specific basis.

Because Utah has not made specific proposals corresponding to these Federal requirements, the Director finds that Utah's proposed rule at R614–301–356.231 is less effective than the corresponding Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i). The Director is approving Utah's proposed rule at R614–301–356.231 but is requiring Utah to amend R614–301–356.231, or otherwise amend its program, to specify the minimum tree and shrub stocking and planting arrangements for areas to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products. The Director is also requiring that Utah amend R614–301–356.231, or otherwise amend its program, to specify whether it will consult the Utah forestry and wildlife agencies on a programwide or permit-specific basis. If Utah elects to conduct the consultation on a programwide basis, it must submit to OSM proposed tree and shrub stocking and planting arrangements and letters from the Utah forestry and wildlife agencies concurring with those stocking and planting arrangements. If Utah elects to conduct the consultation on a permit-specific basis, it must submit to OSM a description of the procedures it will use to notify and obtain the concurrence of Utah forestry and wildlife agencies of the tree and shrub stocking and planting arrangements proposed by permit applicants.

10. R614–301–356.110, Vegetation Success Standards and Sampling Techniques

The Director previously required at 30 CFR 944.16(c) that Utah amend its program to include standards for revegetation success and statistically valid sampling techniques for measuring vegetation ground cover, production, and stocking (finding No. 6; 55 FR 13773, 13777; April 12, 1990). At R614–301–356.110, Utah references the vegetation success standards and sampling techniques of the Division's "Vegetation Information Guidelines, Appendix A" Utah submitted the Vegetation Information Guidelines in this amendment.

Because Utah proposes success standards and sampling techniques in its Vegetation Information Guidelines, the Director is removing the required program amendment at 30 CFR 944.16(c). However, the Director is, as discussed below, requiring Utah to further amend its program. With the exceptions discussed below, the Director finds Utah's proposed rule at R614–301–356.110 and the Vegetation Information Guidelines to be no less effective than the corresponding Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

(a) *Alternative sampling and analysis procedures.* The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring ground cover, production, and stocking be selected by the regulatory authority and be included in the approved regulatory program. As required by 30 CFR 816.116(a)(1) and 817.116(a)(1), Utah in its Vegetation Information Guidelines specifies the procedures to be used for sampling, measuring, and analyzing vegetation. However, the guidelines allow he use of alternative sampling and analysis procedures, provided that prior approval is obtained from the Division. The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques be included in the approved regulatory program (i.e., be approved via the program amendment process and be subject to public review and comment). Therefore, before Utah can allow the use of alternative sampling and analysis procedures, these procedures must be submitted to OSM for review as a State program amendment.

(b) *Methods.* Utah in part 2 of the "Methods" section of the Vegetation Information Guidelines discusses the use of "range sites" for determining revegetation success. In subpart b, Utah indicates that range sites will be sampled, but it omits any discussion as to the required size of the range sites to be used for establishing revegetation success standards. Utah states that range sites will be described in accordance with the Soil Conservation Service's (SCS's) National Range Handbook. However, the handbook (section 304.1, "Delineation of Range Sites") states only that range sites can be delineated singly or included with other range sites, and the intensity of delineation depends on the use (which is this case is a revegetation success standard). Because the referenced SCS handbook does not specify the minimum size of range sites to be used for establishing revegetation success, the Director is requiring Utah to amend its guidelines to include this information.

Appendix A of the Vegetation Information Guidelines provides general and detailed guidance on sampling concepts and data analysis, but it does not identify the specific methodology to be used. Therefore, the Director is requiring Utah to either reference in the Vegetation Information Guidelines documents which describe in detail the procedures for each proposed sampling methodology, or actually include in the Vegetation Information Guidelines the detailed description of the procedures for each proposed sampling methodology.

In the "Sample Adequacy" section of appendix A of the Vegetation Information Guidelines, Utah establishes a maximum sample size of 40 for all sampling methods. Utah did not submit any information demonstrating that this maximum sample size is adequate. Setting a limit on the maximum number of samples to be taken contradicts the purpose of

using a sample-adequacy formula. Therefore, the Director is not approving the maximum sample size of 40 in appendix A of the Vegetation Information Guidelines, and is requiring Utah to remove it from appendix A of the Vegetation Information Guidelines.

11. R614–301–420 and 424, Air Quality

The Director previously required at 30 CFR 944.16(e) that Utah amend R614–301–420 to specify that a permit application contain a plan for fugitive dust control practices when the surface mining activities produce less than 1 million tons of coal per year (finding No. 11; 55 FR 13773, 13778; April 12, 1990). Utah has complied with this requirement in this amendment. Therefore, the Director is removing the required amendment at 30 CFR 944.16(e).

However, proposed rule R614–301–420 does not include the requirement at 30 CFR 780.15(b) that an application include an air quality monitoring program if such a program is required by the regulatory authority. On this basis, the Director finds that Utah's proposed rule at R614–301–420 is less effective than the corresponding Federal regulation at 30 CFR 780.15(b). The Director is approving the proposed rule but is requiring Utah to amend rule R614–301–420, or otherwise amend its program, to include the requirement that an application include an air quality monitoring program, if such a program is required by the regulatory authority. The Director is also requiring Utah to change an incorrect cross-reference in rule R614–301–424 from "R614–244.300" to "R614–301–224.300."

12. R614–301–528.320, Engineering and Hydrology Permit Application Requirements for Coal Mine Waste Disposal Areas

The Director previously required at 30 CFR 944.16(f) that Utah amend R614–301–528.320 to prohibit end or side dumping of coal mine waste in coal mine waste disposal areas (finding No. 13; 55 FR 13773, 13779; April 12, 1990). Because Utah proposes, in this amendment, a rule at R614–301–528.320 to prohibit end or side dumping of coal mine waste in coal mine waste disposal areas, the Director is removing the required amendment at 30 CFR 944.16(f). However, the Director is, as discussed below, requiring Utah to further amend this rule.

Utah proposes a rule at R614–301–528.320 that (1) all coal-mine waste be placed in new or existing disposal areas within a permit area that are approved by the Division for this purpose, (2) coal-mine waste disposal areas meet the design criteria of R614–301–536, and (3) placement of coal-mine waste by "end dumping" or "side dumping," as defined in the U.S. Bureau of Mines' "A Dictionary of Mining, Mineral, and Related Terms" (Washington, DC: U.S. Government Printing Office, 1968) is prohibited. In this publication, the U.S. Bureau of Mines defines "end dumping" to mean "the process in which earth is pushed over the edge of a deep fill and allowed to roll down the slope," but it does not, as Utah indicates in its proposed rule, define "side dumping."

With the exception of the reference to the U.S. Bureau of Mines' definition, the wording of Utah's proposed rule is substantively identical to the wording of the Federal regulations at 30 CFR 816.81(a) and 817.81(a) as modified by PSMRL II, Round II (620 F. Supp 1534–1535). In accordance with PSMRL II, Round II, OSM suspended the Federal regulations at 30 CFR 816.81(a) and 817.81(a) insofar as they allowed end dumping or side dumping of coal-mine waste in coal-mine waste disposal areas (51 FR 41952, 41959, November 20, 1986).

Under the referenced Bureau of Mines' definition for "end dumping," Utah could allow other forms of end or side dumping other than the "pushing" of coal mine waste over the edge of a fill (e.g., direct dumping from a truck or front end loader over the edge of a fill). Also, in effect Utah does not define "side dumping" because it references a nonexistent U.S. Bureau of Mines' definition for "side dumping." Because Utah's proposed coal-mine waste provisions do not prohibit all forms of end dumping or side dumping of coal mine waste, the Director finds that Utah's proposed rule at R614–301–528.320 is less effective than the corresponding Federal regulations at 30 CFR 816.81(a) and 817.81(a) as modified by the court. Specifically, the Director (1) is not approving the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines," and (2) is requiring Utah to remove this phrase.

13. R614–301–553, Backfilling and Grading

The Director previously did not approve Utah's proposed backfilling and grading rule at R614–301–352 because it did not include specific reclamation schedules (i.e. time and distance standards) for contemporaneous reclamation (finding No. 9; 55 FR 13773, 13778; April 12, 1990).

Utah reproposes R614–301–352 and at R614–301–553 proposes, for the purposes of surface coal mining and reclamation activities, that rough backfilling and grading follow coal removal by not more than 60 days or 1500 linear feet.

OSM's contemporaneous reclamation regulation at 30 CFR 816.100 (48 FR 24638, June 1, 1983) was remanded by PSMRL II, Round II, to the extent that it did not specify both time and distance factors defining contemporaneous reclamation.

Due to the court's remand, OSM did not use the 1983 regulation in evaluating the sufficiency of Utah's proposed rule, despite the fact that the remanded regulation was not actually suspended by OSM. OSM evaluated the proposed amendment based upon its consistency with the court's decision.

The OSM regulation that existed prior to the 1983 regulation included time and distance standards for contour surface mining and area surface mining (44 FR 14902, 15411, March 13, 1979). Utah proposes at R614–301–553 a specific time and distance standard for rough backfilling and grading (60 days or 1500 linear feet) for all "surface coal mining and reclamation activities" (which includes contour surface mining and area surface mining) that is the same as the OSM 1979 standard for just contour surface mining. (OSM's 1979 standard for area surface mining was 180 days or four spoil ridges.)

The Director finds that Utah's proposed time and distance standard at R614–301–553 of 60 days or 1500 linear feet for all "surface coal mining and reclamation activities" is no less effective than the Federal regulation as modified by the court's decision. The Director is approving Utah's proposed rules at R614–301–352 and R614–301–553.

14. R614–301–553.700 and R614–301–553.800, Backfilling and Grading of Thin and Thick Overburden Surface Mines

The Director previously did not approve Utah's proposed thin and thick overburden surface mine rules at R614–310–553.700 and R614–310–553.800 (finding No. 14; 55 FR 13773, 13779; April 12, 1990) because they did not provide formulae for defining thin and thick overburden that were consistent with PSMRL II, Round II.

At R614–301–553.700 and R614–301–553.800, Utah proposes in this amendment that the thin overburden surface mine provisions apply where the final thickness would be less than 0.8 of the initial thickness, and the thick overburden provisions apply where the final thickness would be greater than 1.2 of the initial thickness. Utah's proposed rules are substantively identical to the corresponding Federal regulations at 30 CFR 816.104(a) and 816.105(a) (44 FR 15412, March 13, 1979).

PSMRL II, Round II (21 ERC at 1746) remanded the Federal thin and thick

overburden regulations because the Secretary's rationale for removing the objective formulae for defining thin and thick overburden from the previous 1979 regulations (44 FR 15312, 15412, March 13, 1979) was not justified.

Because the proposed Utah rules are substantively identical to the 1979 Federal regulations and provide formulae for defining thin and thick overburden that are consistent with the court's decision, the Director finds that Utah's proposed rule at R614–310–553.700 is consistent with the court's decision and is no less effective than the Federal regulations. Therefore, the Director approves Utah's proposed rule at R614–301–553.700.

Utah appears to have inadvertently included the words "mine plan" in the phrase "permit mine plan area" in the third sentence of proposed rule R614–301–553.800, which addresses thick overburden mines. "Mine plan" is not defined in the Utah program, and the phrase "permit mine plan area" is not consistent with the analogous phrase "permit area" in Utah's thin overburden rules at R614–301–553.700. The Director is not approving the words "mine plan" in Utah's proposed thick overburden rule at R614–301–553.800 and is requiring Utah to remove these words from this rule.

15. R614–301–728, Probable Hydrologic Consequences (PHC) Determinations Policy Statement

The Federal regulations regarding PHC determinations at 30 CFR 780.21(f) and 784.14(e) were challenged in PSMRL II, Round III on the grounds that they were wrongly limited to activities occurring during the "life of the permit" as opposed to the "life of the mine." Rather than ruling on the substance of this argument, the court instead remanded the rules on procedural grounds. As a result of the court decision, OSM suspended the PHC regulations (51 FR 41952, 41957, November 20, 1986). OSM reexamined the regulations and promulgated new regulations at 30 CFR 780.21(f) and 784.14(e) identical to those that had been previously suspended (53 FR 36394, 36400, September 19, 1988).

However, in the preamble to the new regulations, OSM clarified how its interpretation to limit the PHC determination to the permit and adjacent areas ("life of the permit") was appropriate. OSM interprets the PHC determination to apply to all activities authorized under the permit for the permit and adjacent areas. The PHC determination need not consider those activities that may occur during the life of the mine that would be authorized under future permitting activities. A new PHC determination would be required for any additional surface mining activity that could impact the hydrologic regime authorized during the initial permit term or in future permitting actions. A renewal of the initial permit with no changes would not necessitate a new PHC determination. Therefore, OSM considers the PHC determination to be "spatial" rather than "temporal" in nature (53 FR 36394, 36396–36399, September 19, 1988). A "temporal" PHC determination would apply to all known mining activities associated with the initial permit area and those which may occur during the life of the mine.

In this proposed amendment, Utah submitted a policy statement (appendix I, page 2, issue No. 22) specifying that it interprets its PHC rules to require both "temporal and spatial" considerations when performing PHC determinations (administrative record No. UT–570). On this basis, the Director finds that Utah's proposed rule at R614–301–728, as augmented by the revised policy statement, is no less effective than the corresponding Federal regulations at 30 CFR 780.21(f) and 784.14(e). The Director is approving the rule and policy statement as part of the approved Utah program.

16. R614–301–742.224, R614–301–512.140, and R614–301–731.750, Certification of Maps and Plans

(a) *R614–301–742.224.* Utah proposes at rule R614–301–742.224 that the design of sedimentation ponds, which rely primarily on storage to control runoff of a design event, be certified by a qualified, registered, professional engineer or qualified, registered, professional land surveyor in accordance with R614–301–512.100.

The corresponding Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2) require that the design of such sedimentation ponds be certified by a qualified, registered, professional engineer or land surveyor, in any State authorizing a land surveyor to do so.

OSM obtained a copy of chapter 22 of the Utah Professional Engineers and Land Surveyors Licensing Act (UPELSLA) and reviewed it to determine whether it authorizes land surveyors to do such certifications. Chapter 22, section 58–22–2(8)(a) of UPELSLA, authorizes land surveyors in Utah to perform work relating to "the monumenting of property boundaries, and for the platting and layout of lands and subdivisions, including the topography, alignment, and grades of streets and the preparation and perpetuation of maps, record plats, field notes records, and property descriptions that represent these surveys." However, nothing in UPELSLA authorizes registered professional land surveyors to prepare and/or certify engineering designs as proposed at R614–301–742.224.

In addition, Utah's proposed rule at R614–310–742.224 is not consistent with Utah's rule at R614–301–512.200. Utah proposes at R614–301–742.224 that a qualified, registered, professional land surveyor may certify, in accordance with R614–301–512.100, the design of a sedimentation pond relying primarily on storage to control runoff. This proposed requirement contradicts Utah's rule at R614–301–512.200, which requires that plans and engineering designs for impoundments be certified by a qualified registered professional engineer.

As discussed above, the Director finds that Utah's proposed rule at R614–301–742.224, which allows qualified, registered, professional land surveyors to certify sedimentation pond designs in accordance with R614–301–512.100, is in contradiction of UPELSLA and R614–301–742.224. Because (1) the Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2) allow land surveyors to certify the designs of the discussed sedimentation ponds only in those States authorizing a land surveyor to do so, and (2) UPELSLA provides no such authorization, the Director finds that Utah's proposed rule at R614–301–742.224 is less effective than the corresponding Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2). For these reasons, the Director is not approving (1) Utah's proposed rule at R614–301–742.224 and (2) the phrases "or qualified professional land surveyor" and "in accordance with R614–301–512.100" there. The Director is requiring Utah to amend the proposed rule by removing the phrase "or qualified professional land surveyor" and referencing "R614–301–512.200" rather than "R614–301–512.100."

(b) *R614–301–512.140 and R614–301–731.750.* As discussed in finding No. 16(a), Utah's proposed rule at R614–301–742.224 references rule R614–301–512.100. At referenced rule R614–301–512.100 (specifically at R614–301–512.140), Utah authorizes qualified, registered, professional land surveyors to certify the cross sections addressed at R614–301–731.700. Referenced rule R614–301–731.700 (specifically at R614–301–731.750) requires that cross sections for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam or embankment, be certified according to R614–301–512.100. Therefore, in

combination, referenced rules R614–301–512.140 and R614–301–731.750 allow qualified, registered, professional land surveyors to certify the cross section of proposed sedimentation ponds, water impoundments, and coal processing waste banks, dams, and embankments.

The corresponding Federal regulations at 30 CFR 780.25(a)(1)(i) and (a)(3)(i) and 784.16(a)(1)(i) and (a)(3)(i) require a general plan, and a detailed plan for each structure that does not meet the size or other criteria of 30 CFR 77.216(a), for each proposed sedimentation pond, water impoundment, and coal processing waste dam or embankment within the proposed permit area to be certified by a qualified registered, professional engineer or land surveyor, in any State which authorizes land surveyors to prepare and certify such plans, except that detailed plans for all coal processing waste dams and embankments not meeting the size or other criteria of 30 CFR 77.216(a) must be certified by a qualified, registered, professional engineer.

As discussed in finding No. 16(a), nothing in UPELSLA authorizes registered professional land surveyors to prepare and/or certify engineering designs. Therefore, rules R614–301–512.140 and R614–301–731.750, which allow qualified, registered, professional land surveyors to prepare and certify designs, are in contradiction of UPELSLA.

Utah's rules at R614–301–512.140 and R614–301–731.750 also are not consistent with Utah's rule at R614–301–512.200. Utah at rules R614–301–512.140 and R614–301–731.750 allows qualified, registered, professional land surveyors to certify the cross sections of proposed sedimentation ponds, water impoundments, and coal processing waste banks, dams, and embankments. This contradicts Utah's rule at R614–301–512.200, which requires that plans and engineering designs for impoundments and coal mine waste structures be certified by a qualified, registered, professional engineer.

Also, Utah's rules at R614–301–512.140 and R614–301–731.750, which allows qualified, registered, professional land surveyors to certify coal processing waste banks, dams, and embankments, are not consistent with the corresponding Federal regulations at 30 CFR 780.25(a)(3)(i) and 784.16(a)(3)(i), which explicitly state that qualified, registered, professional land surveyors are not authorized to certify such coal processing waste structures.

Based upon the discussions above, the Director finds that Utah's proposed rules at R614–301–512.140 and R614–301–731.750, which allow qualified, registered, professional land surveyors to certify cross sections of proposed sedimentation ponds, water impoundments, and coal processing waste banks, dams, and embankments, are in contradiction of UPELSLA and R614–301–512.200. Because (1) the Federal regulations at 30 CFR 780.25 (a)(1)(i) and (a)(3)(i) and 784.16 (a)(1)(i) and (a)(3)(i) allow qualified, registered, professional land surveyors to certify sedimentation ponds and water impoundments only in those States authorizing a land surveyor to do so, and (2) UPELSLA provides no such authorization, the Director finds that Utah's proposed rules at R614–301–512.140 and R614–301–731.750 are less effective than the corresponding Federal regulations at 30 CFR 780.25 (a)(1)(i) and (a)(3)(i) and 784.16 (a)(1)(i) and (a)(3)(i). The Director also finds that Utah's proposed rules at R614–301–512.140 and R614–301–731.750 are less effective than the corresponding Federal regulations at 30 CFR 780.25(a)(3)(i) and 784.16(a)(3)(i) to the extent that they allow qualified, registered, professional land surveyors to certify coal processing waste banks, dams, and embankments. The Director is requiring Utah to amend (1) rule R614–301–512.140 to reference "R614–301–731.700 through R614–301–731.740" rather than "R614–301–731.700," and (2) rule R614–301–731.750 to reference "R614–301–512.200" rather than "R614–301–512.100."

17. R614–301–746.340, Coal Mine Waste Impounding Structures

Utah proposes a rule at R614–301–746.340 which requires that impounding structures constructed of or impounding coal mine waste be designed and operated so that at least 90 percent of the water stored during the design precipitation event will be removed within a 10-day period following the event. The corresponding Federal regulations at 30 CFR 816.84 (e) and (f) and 817.84 (e) and (f) require that (1) impounding structures constructed of or impounding coal mine waste be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period and (2) at least 90 percent of such stored water actually be removed within the 10-day period following the design precipitation event.

At rule R614–301–746.340, Utah proposes to combine into one rule the design and operation requirements that are addressed in more than one Federal regulation. The Director (1) finds that Utah's proposed rule at R614–301–746.340 is no less effective than the corresponding Federal regulations at 30 CFR 816.84 (e) and (f) and 817.84 (e) and (f); and (2) is approving this rule.

18. R614–302–271, Variances from Approximate Original Contour (AOC) Restoration Requirements

The Director previously required at 30 CFR 944.16(g) that Utah further amend R614–302–271 to specify that variances from AOC for backfilling and grading operations be only allowed for operations in steep-slope mining areas (finding No. 15; 55 FR 13773, 13780; April 12, 1990). Utah proposes at R614–302–271 that "the Division may issue approval or, if applicable, a permit for nonmountaintop removal mining in steep slope areas which includes a variance from the requirements * * * to restore the disturbed areas to their approximate original contour."

PSMRL II, Round II (620 F.Supp. at 1574–1578) remanded the Federal regulations at 30 CFR 785.16, 816.33(d), and 817.133(d) to the extent that the regulations permitted variances from AOC for surface coal mining operations in areas that do not have steep slopes. OSM thereafter suspended these regulations (51 FR 41952, 41957, November 20, 1986).

Due to the court's remand and OSM's subsequent suspension of 30 CFR 785.16, 816.133(d), and 817.133(d), OSM did not use the suspended portions of these Federal regulations in evaluating the sufficiency of the proposed Utah rules. OSM evaluated the proposed rule based upon its consistency with the court's decision.

The proposed Utah rule limits the allowance of variance from AOC to steep-slope mining operations. Therefore, the Director (1) finds that Utah's proposed rule at R614–302–271 is consistent with the court's decision, (2) is approving Utah's this rule and (3) is removing the required amendment at 30 CFR 944.16(g).

IV. Summary and Disposition of Comments

1. Public Comments

OSM solicited public comments 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.

The U.S. Bureau of Mines and U.S. Forest Service acknowledged receipt of the proposed amendment but did not comment on it (administrative record Nos. UT-579 and UT-586).

As discussed below, the National Park Service (NPS) and the Mine Safety and Health Administration (MSHA) commented on several provisions of the proposed amendment (administrative record Nos. UT 581 and UT-588).

(a) *NPS.* NPS commented that Utah's proposed rule at R614-100-200(c)(ii), definition of VER, contains an incomplete sentence "the prohibition cause by 40-10-24 of the Act." The Director is not approving this phrase and is requiring Utah to remove it from its rule. See finding No. 3(c).

NPS commented that Utah's proposed air quality rule at R614-301-424 does not require that permit applications include an air quality monitoring program should the regulatory authority decide to require such a program. The Director is requiring Utah to amend its program to include such a requirement. See finding No. 11.

NPS commented that Utah's proposed rule at R614-103-220, which concerns designations of Federal lands as unsuitable for mining, contains an incorrect reference to SMCRA. Utah cites section 522(a) of SMCRA; the correct citation is section 523(a). The Director is requiring Utah to amend its program to cite the correct section of SMCRA. See finding No. 5.

(b) *MSHA.* MSHA commented that, in general, the proposed Utah rules are acceptable and they do not conflict with current MSHA regulations. MSHA also had some specific comments (administrative record No. UT-588).

MSHA commented on Utah's proposed rule at R614-301-533.100. The proposed rule states that: "An impoundment meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage will have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2. Impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage will have a minimum static safety factor of 1.3 for normal pool with steady state seepage saturation conditions or meet the requirements of R614-301-733.210." MSHA commented that Utah should clarify in proposed rule R614-301-533.100 that the required static safety factor applies to impoundment embankments. The Director is not requiring Utah to amend proposed rule R614-301-533.100 because the wording of Utah's proposed rule is substantively identical to the corresponding Federal regulations at 30 CFR 816.49(a)(3) and 817.49(a)(3). See finding No. 1.

MSHA also commented on Utah's proposed rule at R614-301-743.200. It stated that the design precipitation for impoundments event is a 100-year, 6-hour event, or such larger event as demonstrated to be needed by the Division, while MSHA's criteria for high hazard dams is the Probable Maximum Flood (PMF). The Director is not requiring Utah to amend proposed rule R614-301-533.200 because the wording of the proposed rule is substantively identical to the corresponding Federal regulations at 30 CFR 816.49(a)(8)(ii)(A) and 817.49(a)(8)(ii)(A). See finding No. 1.

3. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), OSM is required to provide the proposed amendment, which included provisions that may have an effect on historic properties, to the SHPO and ACHP for comment.

SHPO acknowledged receipt of the proposed amendment and responded that it had no comments on it (administrative record No. UT-584).

ACHP did not comment on the proposed amendment.

4. EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State 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.*) EPA gave its written concurrence on the proposed amendment on August 30, 1990 (administrative record No. UT-587).

EPA commented that Utah's proposed rules must be implemented consistent with the requirements of the Clean Water Act and cannot allow instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. These impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States occur by permit as appropriate under either section 402 of 404 of the Clean Water Act.

With specific reference to Utah, EPA noted that Utah's proposed rule at R614-301-742.221 would allow placement of sediment ponds in perennial streams if approved by the Division, and that proposed rule R614-301-733.222 could allow the creation of impoundments in the waters of the United States.

The Director acknowledges EPA's concerns. Utah has been notified of these concerns by their inclusion in the administrative record. The Director emphasizes that section 702(a)(3) of SMCRA provides that nothing in the SMCRA shall be construed as superseding, amending, modifying or repealing the Clean Water Act, as amended, State laws enacted pursuant thereto, or other Federal laws relating to the preservation of water quality. Utah's general hydrologic balance rule at R614-301-751 is consistent with the corresponding Federal regulations at 30 CFR 816.45(a) in that it requires operators to comply with Federal and State water quality statutes, regulations standards and effluent limitations. Therefore, Utah permit applicants and mine operators are aware of their responsibilities under the Clean Water Act, and the Director is not requiring any further action on the part of Utah at this time.

V. Director's Decision

Based on the above findings, the Director is approving in part, not approving in part, and deferring decision in part on the proposed amendment as submitted by Utah on July 3, 1990, and as revised by it on November 26, 1990. In conjunction with the Director's decision

to approve and not approve parts of the proposed amendment, the Director is requiring Utah to amend its program. The Director is also removing the previously required amendments at 30 CFR 944.16.

With the following exceptions the Director is approving the provisions of Utah's proposed amendment. As discussed respectively in finding Nos. 3(b), 4, 10(b), 12, 14, and 16(a), the Director is not approving proposed (1) R614–100–200, the phrase "the prohibition caused by 40–10–24 of the Act" in subsection (c)(ii) of the definition of VER; (2) R614–100–450 through 452, termination of jurisdiction; (3) Appendix A of the Vegetation Information Guidelines, references to the maximum sample size of 40; (4) R614–301–528.320, the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines" in the coal mine waste disposal requirements; (5) R614–301–553.800, the words "mine plan" in the backfilling and grading of thick overburden surface mine requirements; and (6) R614–301–742.224, the phrases "or qualified registered professional land surveyor" and "in accordance with R614–301–512.100" in the maps and plans certification requirements. The Director is not approving these proposed rules because they are less effective than the Federal regulations implementing SMCRA or inconsistent with the court decisions in PSMRL II, Round II; PSMRL II, Round III; or National Wildlife Fed'n.

As discussed in finding No. 3(a), the Director is deferring decision on Utah's proposed definition of "road" at R614–100–200.

As discussed respectively in findings Nos. 3(b), 5, 7, 8, 9, 10, 11, 12, 14, 16, the Director is requiring Utah to further amend (1) R614–100–200, definition of VER; (2) R614–103–220, areas unsuitable for coal mining and reclamation operations; (3) R614–300–160 through R614–300–163.400, improvidently issued permits; (4) R614–301–111.400, identification of interests and compliance information; (5) R614–301–356.231, stocking and planting arrangements for trees and shrubs; (6) Vegetation Information Guidelines; (7) R614–301–424, air quality; (8) R614–301–528.320, engineering and hydrology permit application requirements for coal mine waste disposal areas; (9) R614–301–553.600, backfilling and grading of thick overburden surface mines; and (10) R614–301–742.224, R614–301–512.140, and R614–301–731.750, certification of maps and plans. The Director is requiring further amendments of these proposed rules because they are less effective than the Federal regulations implementing SMCRA.

As discussed in finding Nos. 3(b), 3(c), 6, 10, 11, 12, and 18, the Director is removing the previously required amendments at 30 CFR 944.16 (a), (b), (d), (c), (e), (f), and (g).

Except as noted, the Director is approving the rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public. The Federal regulations at 30 CFR part 944 codifying decisions concerning the Utah program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision. Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Utah program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Utah of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exception 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 would be met by the State.

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 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 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 (q) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(q) With the exceptions of (1) R614–100–200, the phrase "the prohibition caused by 40–10–24 of the Act" in subsection (c)(ii) of the definition of "valid existing rights;" (2) R614–100–200, the phrase "and may not include public roads as determined on a site-specific basis" in the definition of "road;" (3) R614–100–450 through 452, termination of jurisdiction; (4) Appendix A of the Vegetation Information Guidelines, references to the maximum sample size of 40; (5) R614–301–528.320, the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines" in the coal mine waste disposal requirements; (6) R614–301–553.800, the words "mine plan" in the backfilling and grading of thick overburden surface mine requirements; and (7) R614–301–742.224, the phrase "or qualified registered professional land surveyor" in the maps and plans certification requirements, the following revisions to the Utah permanent

regulatory program rules as submitted to OSM on July 3, 1990, and as revised on November 26, 1990, are approved effective August 23, 1991.

R614–100–200 Definitions of "Fragile Lands," "Owned or Controlled" and "Owns or Controls," "Unwarranted Failure to Comply," and "Valid Existing Rights"
R614–100–415 Applicability
R614–103–220, 221, and 222 Areas Unsuitable for Coal Mining and Reclamation Operations
R614–105–443 Administrative Procedures for Blaster Training, Examination, and Certification
R614–201–400 through 432, and 432.100, .300, 433, and 434 Coal Exploration
R614–300–112.500 Administrative Procedures—Permitting
R614–300–132.100, .120, .200, and .300 Review of Compliance
R614–300–148, 148.100, and .200 Permit Conditions
R614–300–160, 161, 162.100 through .300, 163, 163.100 through .400, 164, 164.100 through .300 and 170 Review Procedures for Improvidently Issued Permits
R614–301–112.200 through .420 Permit Application Requirements, Identification of Interests
R614–301–112.900 Permit Application Requirements, Updating Ownership and Control Interests
R614–301–113.300 through .310, and 113.400 Violation Information
R614–301–352 Contemporaneous Reclamation
R614–301–356.232 and R614–301–357.300 Revegetation
R614–301–411.145 Land Use
R614–301–521.170 and .180 Roads and Support Facilities
R614–301–525.160 and .232 Subsidence
R614–301–526.220 Support Facilities
R614–301–527.200, .230, and .240 Roads and Support Facilities
R614–301–528.320 Coal Mine Waste
R614–301–533.100 Impoundments
R614–301–534.130 through .150 Roads
R614–301–542.620 and .640 Roads and Support Facilities
R614–301–553 Backfilling and Grading
R614–301–553.700 Backfilling and Grading of Thin Overburden Surface Mines
R614–301–733.210 Permanent and Temporary Impoundments
R614–301–742.222, .223, and .225 Siltation Structures
R614–301–742.412 and .423 Roads and Support Facilities
R614–301–743.130, .131, .132, and .200 Impoundments
R614–301–746.312 and .340 Coal Mine Waste Impounding Structures
R614–302–271 Variances From Approximate Original Contour Restoration Requirements
R614–303–232.500 Renewal of Permits for Reclamation
R614–400–319 State Enforcement Provisions
R614–402–120, 220, 310, 320, and 410 Inspection and Enforcement
R614–301–728 Vegetation Information Guidelines; Probable Hydrologic Consequences (PHC) Determinations as Augmented by a Policy Statement

3. Section 944.16 paragraphs (a) through (g) are removed and new paragraphs (a) through (m) are added to read as follows:

§ 944.16 Required program amendments.

* * * * *

(a) By November 21, 1991, Utah shall submit a proposed amendment for the definition of "valid existing rights" at R614–100–200, deleting the phrase "the prohibition caused by 40–10–24 of the Act" in subsection (c)(ii) of the definition.

(b) By November 21, 1991, Utah shall propose an amendment for its areas unsuitable for coal mining and reclamation operations rule at R614–103–220, citing "Section 523(a) of the Federal Act" rather than "Section 522(a) of the Federal Act."

(c) By November 21, 1991, Utah shall propose an amendment for its improvidently issued permit rules at R614–300–160 through R614–300–163.400, or otherwise propose an amendment to its program, to include State-specific counterparts to the Federal violations review criteria listed in the April 28, 1989, **Federal Register** (54 FR 18438, 18440–18441).

(d) By November 21, 1991, Utah shall propose an amendment for its identification of interests and compliance information rule at R614–301–111.400, or otherwise propose an amendment to its program, to require permit applicants to submit information in the OSM-prescribed format.

(e) By November 21, 1991, Utah shall propose an amendment for its revegetation rule at R614–301–356.231, or otherwise propose an amendment to its program, to specify the minimum tree and shrub stocking and planting arrangements to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products, and to specify whether consultation with State agencies on these stocking and planting arrangements will be conducted on a programwide or permit-specific basis.

(f) By November 21, 1991, Utah shall propose an amendment for part 2 of the "Methods" section of the Vegetation Information Guidelines to specify the minimum size of range sites to be used for establishing revegetation success standards.

(g) By November 21, 1991, Utah shall propose an amendment for appendix A of its Vegetation Information Guidelines to either reference documents which describe in detail the procedures for each proposed sampling methodology or actually include the detailed description of the procedures for each proposed sampling methodology in the guideline.

(h) By November 21, 1991, Utah shall delete from appendix A of its Vegetation Information Guidelines the maximum sample adequacy size of 40.

(i) By November 21, 1991, Utah shall propose an amendment for its air quality rule R614–301–424, or otherwise propose amendment of its program, specifying that a mine permit application shall include an air quality monitoring program, if such a program is required by the regulatory authority, and citing "R614–301–244.300" rather than "R614–224.300."

(j) By November 21, 1991, Utah shall propose an amendment for its coal mine waste disposal rule at R614–301–528.320 removing the phrase "as defined in 'A Dictionary of Mining, Mineral, and Related Terms' 1968, U.S. Bureau of Mines."

(k) By November 21, 1991, Utah shall propose an amendment for its thick overburden rule at R614–301–553.800 removing the words "mine plan."

(l) By November 21, 1991, Utah shall propose an amendment for its maps and plans certification rule at R614–301–742.224 removing the words "or qualified professional land surveyor" and referencing "R614–301–512.200" rather than "R614–301–512.100."

(m) By November 21, 1991, Utah shall propose an amendment for its maps and plans certification rule to amend (1) rule R614–301–512.140 to reference "R614–301–731.700 through R614–301–731.740" rather than "R614–301–731.700," and (2) rule R614–301–731.750 to reference "R614–301–512.200" rather than "R614–301–512.100."

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