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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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October 30, 1995

Robert D. Williams
Assistant Field Supervisor
U.S. Fish and Wildlife Service
Ecological Services
145 East 1300 South, Suite 404
Salt Lake City, Utah 84115

Re: Alkali Lease Tract, Soldier Creek Mine, Soldier Creek Coal Company, ACT/007/018-95B, Folder #2, Carbon County, Utah

Dear Mr. Williams:

The Division received a response from your agency dated October 4, 1995 that stated "Due to lack of staff and time constraints, the U.S. Fish and Wildlife Service cannot offer comments at this time. This should not be construed as concurrence with the action. Should issues of concern arise or come to our attention, we (USFWS) may provide comments at a later date."

Pursuant to 30 CFR 944.30 Article VI, Section C, Part 2, (the State [Division] / Federal [OSMRE} Cooperative Agreement, attached) ".....DOGM will request all Federal agencies to furnish their findings or any request for additional information to DOGM within 45 days of the date of receipt of the PAP. OSMRE will assist DOGM in obtaining this information, upon request of DOGM." In this case, the Division (DOGM) sent the PAP to USFWS on September 19, 1995, and the 45 days would end on November 3, 1995.

In bringing this part of the Alkali Lease Tract permit process to conclusion, I want to reflect my sensitivity to USFWS's need to prioritize its own workload, while at the same time reflecting the need for the Division to meet its own programmatic mandates with respect to timeliness. Accordingly, the Division will go forward with the approval of the Alkali Lease Tract, and will show for the record that USFWS was given an opportunity to comment as required by our Cooperative Agreement, but USFWS declined to do so.

Should USFWS desire future involvement of the Alkali Lease Tract, I recommend that the Division, USFWS and the permittee meet to discuss a methodology with in the Division permit process that will achieve our respective needs.

If you have any questions, please call me or Pamela Grubaugh-Littig. Thank you.

Sincerely,

Lowell P. Braxton

Lowell P. Braxton
Associate Director, Mining

Enclosure
cc: Ranvir Singh, OSM-WRCC, Denver
Pamela Grubaugh-Littig (w/o enclosure)
Daron Haddock (w/o enclosure)
Joe Helfrich (w/o enclosure)

H:alkfw

PART 944—UTAH

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

§ 944.1 Scope.

This part contains all rules applicable only within Utah that have been adopted under the Surface Mining and Reclamation Act of 1977.

[46 FR 5913, Jan. 21, 1981]

§ 944.10 State regulatory program approval.

The Utah State program as submitted on March 3, 1980, and as amended and clarified on June 16 and July 24, 1980, and resubmitted on December 23, 1980, was conditionally approved effective January 21, 1981. Copies of the approved program, together with copies of the letter of the Division of Oil, Gas and Mining agreeing to the conditions in section 944.11, are available at:

(a) Division of Oil, Gas and Mining, Department of Natural Resources, 3 Triad Center, suite 350, 355 West North Temple, Salt Lake City, UT 84180-1203.

(b) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

[59 FR 17933, Apr. 15, 1994]

§ 944.15 Approval of amendments to State regulatory program.

(a) The following amendments were approved effective June 22, 1982:

(1) Utah House Bill 66 which amends section 40-10-10, 40-10-11, 40-10-16, 40-10-17, 40-10-18, 40-10-21, 40-10-22, and 40-10-24, Utah Code Annotated 1953.

(2) Utah revised regulations UMC 817.124(b) and UMC 784.20(b)(3)(v) adopted April 30 and May 1, 1981.

(b) The following amendments are approved effective (date of publication).

(1) Regulatory modifications to UMC/SMC 845 adopted April 30 and May 1, 1981, as revised August 26, 1982.

(2) Modification of guidelines to allow use of the range site method of measuring revegetation success pursuant to SMC 816.116 and UMC 817.116 submitted to OSM May 21, 1981, together with supplements submitted October 20, 1981 and February 5, 1982.

(c) The following amendments are approved effective December 13, 1982:

(1) UMC 817.42(a)(3)(i) and UMC 817.42(a)(3)(ii) adopted June 29, 1981, as amended August 26, 1982.

(2) UMC 817.53(c) and SMC 816.53(c) adopted June 29, 1981, as amended August 26, 1982.

(3) UMC 817.101(c) adopted June 29, 1981, as amended August 26, 1982.

(4) UMC 817.101(b)(8) adopted August 26, 1982.

(d) The amendments to the following sections were adopted.

(1) November 30, 1982, are approved effective March 7, 1983.

(i) SMC 816.72/UMC 817.72 subparts (b) and (c).

(ii) UMC/SMC 785.19 subpart (c)(3)(ii).

(e) The following amendments are approved effective August 29, 1984.

(1) Modifications to Utah regulations, section UMC 816.42 and UMC 817.42, adopted August 26, 1983.

(2) Modifications to Utah regulations section UMC 840.11 and SMC 840.11 adopted October 27, 1983.

(3) Modifications to Utah regulations, section SMC/UMC 843.12 adopted January 27, 1984.

(f) The following amendments are approved effective December 3, 1985: modifications to the Utah State Program regulations adopted by the Utah Board of Oil, Gas and Mining on June 28, 1984, as revised on June 20, 1985. Those modifications included the following. The following rules in existence prior to June 28, 1984, were repealed: SMC/UMC 800, 805, 806, 807, 808 and UMC 843.11, 843.15, 843.16, 845.12, 845.13, 845.17, 845.18 and 845.19. The following new or revised sections were adopted: (1) UMC/SMC 700.1, 800.5, 800.11, 800.12, 800.13, 800.14, 800.15, 800.16, 800.17, 800.20, 800.21, 800.23, 800.30, 800.40, 800.50, and 800.60; (2) UMC 843.11, 843.15, 843.16, 845.12, 845.13, 845.17, 845.18, 845.19 and 845.20; and (3) definition of "affected area" at UMC/SMC 700.5, with the exception of the exemption for public roads. The portion of the definition after the word "operations" is not approved:

"The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use."

(g) The amendments to UMC/SMC 843.13 submitted to OSM by Utah on February 6, 1984, as revised and clarified by the State in its submittal to OSM dated September 25, 1984 are approved effective December 18, 1985.

(h) The following amendment is approved effective January 16, 1986, modifications to the Utah State Program regulations adopted by the Utah Board of Oil, Gas and Mining on January 31, 1985, as revised on October 2, 1985. Those modifications were as follows: SMC/UMC 700.5—A definition for "incidental boundary change" was added; SMC/UMC 771.21—Paragraph (b)(3) was revised; SMC/UMC 778.12—The existing section was deleted in its entirety and a new section titled "Permit Changes" was adopted.

(i) The following amendments to the Utah State program listed below which were submitted to OSMRE by Utah on January 21, and November 19, 1985 are approved effective June 10, 1986. Revision of the definitions for "adjacent area", "disturbed area" and "permit area"; Deletion of the definition for "mine plan area"; Revisions to SMC 843.11, 843.15, 843.16, 845.12, 845.13, 845.17, 845.18, and 845.19 with the exception of the definition of "mining" to the extent that it excludes the processing, cleaning, concentrating, preparing, or loading of coal at a place other than the mine site; Adoption of SMC 843.20.

(j) The following amendments as submitted to OSMRE on March 3, 1986, are approved effective July 28, 1986.

(1) Modifications to Utah regulations, sections SMC 816.61 and UMC 817.61, revised February 5, 1986.

(2) Modifications to Utah regulations, sections SMC/UMC 850.5 et seq., revised February 5, 1986.

(3) Memorandum of Agreement between the Board and Division of Oil, Gas, and Mining and the Utah Industrial Commission.

(4) Utah Code Annotated Title 40. Chapter 2. Coal Mines, Utah Industrial Commission, sections 40-2-14 through 40-2-16.

(5) General Safety Orders, Utah Industrial Commission, Coal Mines, sections 51 through 53.

(k) The following amendment to the Utah State program which was submitted to OSMRE by Utah on September 3, 1986, is approved effective January 28, 1987.

Revision of the definition for "coal processing plant" and adoption of a definition for "coal processing" under SMC/UMC 700.5.

(l) The following amendment is approved effective March 28, 1988: Modification to the Utah State Program regulations submitted to OSMRE by Utah on January 8, 1988. The modification was as follows: redesignation of the existing SMC/UMC 845.15 (b)(2) as (b)(1)(ii) and adding a new paragraph (b)(2) to provide for a 30-day cap on civil penalty assessments.

(m) The following amendment is approved effective August 18, 1988: Revision of SMC/UMC 785.19(e)(2) regarding alluvial valley floors as submitted by Utah to OSMRE on September 24, 1987, and revised by Utah on April 6, 1988.

(n) With the exceptions of R614-100-200, the first definition of "fragile lands"; R614-100-200, the definition of "previously mined area" to the extent that the definition interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977, or allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed; R614-100-200, the definition of "road", to the extent that it includes the phrase "public roads when an evaluation of the extent of the mining-related uses of the road to the public uses of the road has been made by the Division or;" R614-100-200, the "takings" test as it applies to the definition of "valid existing rights;" R614-100-415, Federal lands coal exploration operation re-

quirements to the extent the rule includes the phrase "which removes less than 250 tons;" R614-301-731.212 and R614-301-731.223, ground and surface-water monitoring requirements to the extent the rule includes the word "accessible;" R614-103-221 and R614-103-222, areas unsuitable for coal mining and reclamation operations; R614-301-352, contemporaneous reclamation; R614-301-411.145, land use; R614-301-525.160 and R614-301-525.232, subsidence control requirements to the extent the rules include the phrase "to the extent required by Utah law;" R614-301-528.320, coal waste disposal requirements to the extent that the rule would allow end dumping or side dumping of coal mine waste in coal mine waste disposal areas; R614-301-553.700 and R614-301-553.800, backfilling and grading of thin and thick overburden surface mines; and R614-302-271, variances from approximate original contour (AOC) requirements to the extent that the rule does not limit the allowance of variance from AOC to steep-slope mining operations, the following revisions to the Utah permanent regulatory program rules submitted to OSM on August 11, 1989, are approved effective April 12, 1990:

R614-100 Administrative: Introduction.
R614-101 Administrative: Restrictions on State Employees.
R614-102 Administrative: Exemption for Coal Extraction Incident to Government-Financed Highway or other Construction.
R614-103 Administrative: Areas Unsuitable for Coal Mining and Reclamation Operations.
R614-104 Administrative: Protection of Employees.
R614-105 Administrative: Blaster Training, Examination and Certification.
R614-200 Coal Exploration: Introduction.
R614-201 Coal Exploration: Requirements for Exploration Approval.
R614-202 Coal Exploration: Compliance Duties.
R614-203 Coal Exploration: Public Availability of Information.
R614-300 Coal Mine Permitting: Administrative Procedures.
R614-301 Coal Mine Permitting: Permit Application Requirements.
R614-301-100 General Contents.
R614-301-200 Soils.
R614-301-300 Biology.
R614-301-400 Land use and Air Quality.
R614-301-500 Engineering.
R614-301-600 Geology.
R614-301-700 Hydrology.
R614-301-800 Bonding and Insurance.
R614-302 Coal Mine Permitting: Special Categories and Areas of Mining.
R614-302-100 General.
R614-302-200 Special Categories of Mining.
R614-302-300 Special Areas of Mining.
R614-303 Coal Mine Permitting: Change; Renewal; and Transfer, Assignment, or Sale of Permit Rights.
R614-303-100 General Information on the Change, Renewal Assignment of Sale of Permit Rights.
R614-303-200 Permit Review, Change and Renewal.
R614-303-300 Transfer, assignment, or Sale of Permit Rights.
R614-400 Inspection and Enforcement: Division Authority and Procedures.
R614-400-100 General Information on Authority and Procedures.
R614-400-200 Information Related to Inspections.
R614-400-300 Provisions of State Enforcement.
R614-401 Inspection and Enforcement: Civil Penalties.
R614-401-100 Information on Civil Penalties.
R614-401-200 When Penalty will Be Assessed.
R614-401-300 Point System for Penalties.
R614-401-400 Assessment of Separate Violations for Each Day.
R614-401-500 Waiver of Use of Formula to Determine Civil Penalty.
R614-401-600 Procedures for Assessment of Civil Penalties—Proposed Assessment.
R614-401-700 Procedures for Informal Assessment Conference.
R614-401-800 Request for Formal Hearing.
R614-401-900 Final Assessment and Payment of Penalty.
R614-402 Inspection and Enforcement: Individual Civil Penalties.
R614-402-100 Information on Individual Civil Penalties.
R614-402-200 When an Individual Civil Penalty May Be Assessed.
R614-402-300 Amount of the Individual Civil Penalty.
R614-402-400 Procedure for Assessment of Individual Civil Penalty.
R614-402-500 Payment of Penalty.

(o) Revisions to the following sections of the Utah Code Annotated 1953, title 40, as submitted to OSM on November 13, 1989, and revised on May 29, 1990, are approved effective August 13, 1990.

40-10-10 Permit Applications
40-10-14 Permit Findings Issued to the Applicant and Other Interested Parties
40-10-20 Civil Penalty for Violations
40-10-21 Civil Actions
40-10-25 Dedicated Credits, Transfer of Funds, and Investment By State Treasurer
40-10-30 Judicial Review of Rules and Orders
40-10-31 Adjudicative Procedures That Supersede Chapter 46b, Title 63

(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.

(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

(r) With the exceptions of the definition of "road" at Utah Administrative Rule (Admin. R.) 614-100-200 to the extent that it includes the phrase "and may not include public roads as determined on a site specific basis" and Utah's February 25, 1991, policy statement titled "Division of Oil, Gas and Mining Policy for the Implementation of Site Specific Determinations of the Public Status of Roads under R614-100-200," which supplements this definition, the following amendment of the Utah permanent regulatory program rules, as submitted to OSM on March 1, 1991, is approved effective November 22, 1991: Utah Admin. R. 614-100-200, definition of "public road."

(s) The recodification of the Utah Administrative Rules and revisions to the following Utah Administrative Rules pertaining to coal mining incidental to the minimg of other minerals, as submitted to OSM on December 30, 1991, are approved effective May 11, 1992.

645-100-200 Definitions of "Cumulative Impact area," "Cumulative Measurement Period," "Cumulative Production," "Cumulative Revenue," "Mining Area," and "Other Minerals."
645-100-414 Applicability.
645-106-100 Scope.
645-106-200 through 262 Application Requirements and Procedures.
645-106-300 through 326 Contents of Application for Exemption.
645-106-400 through 430 Public Availability of Information.
645-106-500 through 522 Requirements for Exemption.
645-106-600 through 616 Conditions of Exemption and Right of Inspection and Entry.
645-106-700 through 724 Stockpiling of Minerals.
645-106-800 through 843 Revocation and Enforcement.
645-106-900 through 926 Reporting Requirements.
645-300-211 Administrative and Judicial Review of Decisions on Permits.

(t) Revisions to the following sections of the Utah Code Annotated 1953, title 40, as submitted to OSM on July 26, 1991, are approved effective August 19, 1992: 40-10-5(1), activities exempt from the requirements of the Utah Coal Mining and Reclamation Act of 1979; deletion of 40-10-5(1)(b), 2-acre exemption; deletion of 40-10-5(2), applicability of the permitting requirements to governmental units; and deletion of 40-10-6.6(1), (2), and (3), deadline for review and proposal of revision of rules, deadline for revision of rules, and effect of notice of violation or denial of permit.

(u) With the exception of proposed R645-100-452 to the extent that it limits the findings of fraud or collusion to actions by the permittee, revisions to the following Utah permanent regulatory program rules as submitted to OSM on November 20, 1991, and revised on February 28, 1992, are approved effective September 11, 1992:

R645-100-200	Definition of "Valid Existing Rights".
R645-100-400 through 452.	Termination of Jurisdiction.
R645-103-220	Areas Designated Unsuitable for Mining by Act of Congress.
R645-301-111.400	Permit Application Requirements.
R645-301-356.231	Revegetation Success Standards.
R645-301-425	Air Quality.
R645-301-528.320	Coal Mine Waste.
R645-301-553.800	Thick Overburden.
R645-301-742.224	Sedimentation Ponds.
R645-301-512.140 and R645-301-731.750.	Cross Sections and Maps.

"Guideline for Examining and Evaluating Violations, Penalties, and Fees under R645-300-110," dated February 28, 1992.

Revisions to the Vegetation Information Guidelines, dated February 1992.

(v) The revision to Utah Admin. R. 614-100-452, termination of jurisdiction, as submitted to OSM on November 5, 1992, is approved effective March 30, 1993.

(w) With the exceptions of (1) Utah Admin. R. 645-301-553.650, the requirement for regulatory authority approval of Utah's AOC alternative; (2) Utah Admin. R. 645-301-553.651, the height and length requirements of retained highwalls; and (3) Utah Admin. R. 645-301-553.652, replacement of a pre-existing cliff or similar natural premining feature with a retained highwall and the date of applicability of those rules, the following revisions to the Utah Administrative Rules, as submitted to OSM on April 30, 1992, and revised on September 30, 1992, are approved effective September 17, 1993.

R645-100-200	Definition of "Highwall."
R645-301-553	Contemporaneous Reclamation for Backfilling and Grading.
R645-301-553.100	Backfilling and Grading of Disturbed Areas.
R645-301-553.130	Static Safety Factor.
R645-301-553.510, .520, and .521	Backfilling and Grading of Previously Mined Areas.
R645-301-553.523	Static Safety Factor and Alternative Stability Criteria.
R645-301-553.620	Incomplete Elimination of Highwalls in Previously Mined Areas.
R645-301-553.630 and .631	Required Regulatory Authority Approval for Mountaintop Removal Operations.
R645-301-553.632 and .633	AOC Variance Criteria.
R645-301-553.652	Replacement of a Pre-existing Cliff or Similar Natural Premining Feature With a Retained Highwall.
R645-301-553.653	Modifications to Retained Highwalls Restoring Cliff-Type Habitats Required by Premining Flora and Fauna.
R645-301-553.654	Compatibility of Retained Highwalls With the Approved Postmining Land Use and Visual Attributes of the Area.
R645-301-553.655	Exemption From Obtaining a Variance From Approximate Original Contour Requirements.

(x) Revisions to Utah's definitions of "affected area," "road," and "public road" at Utah Admin. R. 645-100-200, as submitted to OSM on September 17, 1992, and as subsequently revised on March 24, 1993, as well as Utah's December 5, 1991, withdrawal of its supplemental policy statement, are approved effective April 7, 1994.

(y) Revisions to Utah's significant permit revisions rules, including the deletion of Utah Admin. R. 645-303-224.400 and recodification of Utah Admin. R. 645-303-224.500 and .600, as Utah Admin. R. 645-303-224.400 and .500, respectively, as submitted to OSM on March 7, 1994, are approved effective May 24, 1994.

[47 FR 42350, Sept. 27, 1982, as amended at 47 FR 55675, Dec. 13, 1982; 48 FR 9526, Mar. 7, 1983; 49 FR 34212, Aug. 29, 1984; 50 FR 49544, Dec. 3, 1985; 50 FR 51521, Dec. 18, 1985; 51 FR 2363, Jan. 16, 1986; 51 FR 20967, June 10, 1986; 51 FR 26882, July 28, 1986; 52 FR 2864, Jan. 28, 1987; 53 FR 9887, Mar. 28, 1988; 53 FR 31325, Aug. 18, 1988; 55 FR 13783, Apr. 12, 1990; 55 FR 32911, Aug. 13, 1990; 56 FR 3217, Jan. 29, 1991; 56 FR 41803, Aug. 23, 1991; 56 FR 58858, Nov. 22, 1991; 57 FR 20054, May 11, 1992; 57 FR 37465, Aug. 19, 1992; 57 FR 41696, Sept. 11, 1992; 58 FR 16625, Mar. 30, 1993; 58 FR 48611, Sept. 17, 1993; 59 FR 16548, Apr. 7, 1994; 59 FR 26739, May 24, 1994]

§ 944.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Utah is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR chapter VII and a timetable for enactment that is consistent with Utah's established administrative or legislative procedures.

(a) [Reserved]

(b) [Reserved]

[59 FR 16548, Apr. 7, 1994]

§ 944.20 Approval of Utah abandoned mine plan.

The Utah Abandoned Mine Plan, as submitted on February 9, 1983, and as subsequently revised is approved. Copies of the approved program are available at:

(a) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette, NW., suite 1200, Albuquerque, NM 87102.

(b) Division of Oil, Gas and Mining, Department of Natural Resources, 3 Triad Center, suite 350, 355 West North Temple Salt Lake City, UT 84180-1203.

[59 FR 17933, Apr. 15, 1994]

§ 944.25 Approval of amendments to State abandoned mine plan.

(a) The following sections of the Utah Code Annotated 1953, title 40, pertaining to the Utah abandoned mine plan, as submitted to OSM on July 26, 1991, and revised December 17, 1991, and

March 17, 1992, are approved effective August 19, 1992.

40-10-25(1)
Abandoned Mine Reclamation Program.
40-10-25(2) (c), (e), and (f)
Priorities for Coal.
40-10-25(3) (a), (b), and (c)
Lands and Water Eligible for Reclamation.
40-10-25.1(1)(a)
Creation of Abandoned Mine Reclamation Fund.
40-10-25.1(1)(b)
Use of Abandoned Mine Reclamation Fund, as augmented by a February 19, 1992, Utah Division of Finance Memorandum.
40-10-25.1(2) (a), (b), and (c)
Content and Use of Abandoned Mine Reclamation Fund.
40-10-25.1(3) (a), (b), (c), and (d)
Establishment, Availability, and Use of State Set-Aside Monies.
40-10-25.2 (1) and (2)
Liability Limitation for Abandoned Mine Reclamation.
40-10-27(10)(b)
Lands Adversely Affected by Past Coal Mining Practices.
40-10-28.1 (1), (2), (3), (4), (5), (6), and (7)
Certification of Completion of Coal Reclamation.

(b) [Reserved]

[57 FR 37465, Aug. 19, 1992]

§ 944.30 State-Federal Cooperative Agreement.

The Governor of the State of Utah (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purposes and Responsible Agencies

A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary of the Interior under 30 U.S.C. 1253, to elect to enter into an agreement for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR part 3480 through 3487, and surface coal mining and reclamation operations and activities in Utah on Federal lands (30 CFR Chapter VII Subchapter D), consistent with SMCRA and the Utah Code Annotated (State Act) governing such activities and the Utah State Program (Program).

B. Purposes: The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and activities and coal exploration operations not subject to 43 CFR part 3480, Subparts 3480 through 3487; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Utah in accordance with SMCRA, the Program, and this Agreement.

C. Responsible Administrative Agencies: The Utah Division of Oil, Gas, and Mining (DOGM) will be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) will administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the FEDERAL REGISER as a final rule. This agreement will remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in SMCRA 30 CFR parts 700, 701 and 740, the Program, including the State Act, and the rules and regulations promulgated pursuant to that Act, will be given the meanings set forth in said definitions.

Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the Program will apply.

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program are applicable to Federal lands in Utah except as otherwise stated in this Agreement, SMCRA 30 CFR 740.4, 740.11(a) and 745.13, and other applicable Federal laws, Executive Orders, or regulations.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency: DOGM has and will continue to have the authority under State law to carry out this Agreement

B. Funds: 1. Upon application by DOGM and subject to appropriations, OSMRE will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DOGM in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement; and provided that such State-incurred cost per permitted acre of Federal lands does not exceed the per permitted area costs for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

2. The ratio or cost split of Federal to non-Federal dollars allocated under the cooperative agreement will be determined by OSMRE and DOGM based on the projected costs for regulation of mines within Federal lands, in consideration of the relative amounts of Federal and non-Federal land involved. The designation of mines, based on Federal and non-federal land, will be prepared by DOGM and submitted to OSMRE's Albuquerque Field Office. OSMRE's Albuquerque Field Office and OSMRE's Western Field Operations office will work with DOGM to estimate the amount the Federal government would have expended for regulation of Federal lands in Utah in the absence of this Agreement.

3. OSMRE and the State will discuss the OSMRE Federal lands cost estimate, the DOGM-prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, DOGM will submit its grant application to OSMRE's Albuquerque Field Office. The Federal lands/non-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. Assuming timely submission, this ratio or cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimating the regulatory costs for the following grant year. OSMRE will notify DOGM as soon as possible if such projections are unrealistic.

4. If DOGM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and DOGM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Utah are regulated in accordance with the Program.

5. Funds provided to the DOGM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

C. Reports and Records: DOGM will make annual reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). DOGM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide DOGM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DOGM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel: DOGM will maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA the Federal lands program, and the Program.

E. Equipment and Laboratories: DOGM will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties: The amount of the fee accompanying an application for a permit for operations on Federal lands in Utah will be determined in accordance with 40-10-6(5), Utah Code Annotated 1953 as amended and UMC/SMC 771.25 of the State regulations, and the applicable provisions of the Program and Federal law. All permit fees and civil penalty fines collected from operations on Federal lands will be retained by the State and will be deposited with the State Treasurer. Permit fees will be considered program income. Civil penalty fines will not be considered program income and will be deposited in an account for use in reclaiming abandoned mine sites. The financial status report submitted pursuant to 30 CFR 735.26 will include a report of the amount of fees collected during the State's prior fiscal year.

Article VI: Review of Permit Application Package

A. Submission of Permit Application Package: DOGM and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) in an appropriate number of copies to DOGM. DOGM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by DOGM and will include any supplemental information required by OSMRE and the Federal land management agency. Where section 522(e)(3) of SMCRA applies, DOGM will work with the agency with jurisdiction over the publicly owned park, including units of the National Park System, or historic property included in the National Register of Historic Places (NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR part 740 and include the information necessary for DOGM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands pro-

gram, and other Federal laws, Executive Orders, and regulations for which they are responsible.

B. Review Procedures Where There is No Leased Federal Coal Involved: 1. DOGM will assume the responsibilities for review of permit applications where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c) (1), (2), (4), (6) and (7). In addition to consultation with the Federal land management agency pursuant to 30 CFR 740.4 (c)(2), DOGM will be responsible for obtaining, except for non-significant revisions or amendments, the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOGM will request such Federal agencies to furnish their findings or any requests for additional information to DOGM within 45 calendar days of the date of receipt of the PAP. OSMRE will assist DOGM in obtaining this information, upon request.

Responsibilities and decisions which can be delegated to DOGM under other applicable Federal laws may be specified in working agreements between OSMRE and the State, with the concurrence of any Federal agency involved, and without amendment to this agreement.

2. DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations and activities in Utah on Federal lands not requiring a mining plan pursuant to the Mineral Leasing Act (MLA). DOGM will review the PAP for compliance with the Program and State Act and regulations. DOGM will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

3. The Secretary will make his non-delegable determinations under SMCRA, some of which have been delegated to OSMRE.

4. OSMRE and DOGM will coordinate with each other during the review process as needed. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE may provide assistance to DOGM in resolving conflicts with Federal land management agencies. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DOGM. OSMRE will have access to DOGM files concerning operations on Federal lands. OSMRE will send to DOGM copies of all resulting correspondence between OSMRE and the applicant that may have a bearing on decisions regarding the PAP. The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than SMCRA.

5. DOGM will make a decision on approval or disapproval of the permit on Federal lands.

(a) Any permit issued by DOGM will incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conditioned on compliance with the requirements of the Federal land management agency. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect a unit of the National Park System (NPS), DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impact as set forth under Article X of this agreement.

(b) The permit will include terms and conditions required by other applicable Federal laws and regulations.

(c) After making its decision on the PAP, DOGM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over a publicly owned park or historic property included in the NRHP which would be affected by a design under section 522(e)(3) of SMCRA. A copy of the permit and written findings will be submitted to OSMRE if requested.

C. Review Procedures Where Leased Federal Coal is Involved: 1. DOGM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6) and (7), to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Utah where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to DOGM under the Federal lands program, MLA, the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSMRE, and DOGM, with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. DOGM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State law and regulations. On matters concerned exclusively with regulations under 43 CFR part 3480, Subparts 3480 through 3847, the Bureau of Land Management (BLM) will be the primary contact with the applicant. DOGM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to DOGM copies of all OSMRE correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSMRE will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

BLM will inform DOGM of its actions and provide DOGM with a copy of documentation on all decisions. DOGM will be responsible for informing the applicant of all joint State-Federal determinations. Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of the BLM, the Federal land management agency and other Federal agencies as required.

The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

DOGM will to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c) (2) and (3), respectively. DOGM will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOGM will request all Federal agencies to furnish their findings or any requests for additional information to DOGM within 45 days of the date of receipt of the PAP. OSMRE will assist DOGM in obtaining this information, upon request of DOGM.

3. DOGM will be responsible for approval and release of performance bonds under 30 CFR 740.4(c)(4), and for review and approval of exploration operations not subject to 43 CFR part 3480, under 30 CFR 740.4(c)(6).

DOGM will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i)–(vii).

OSMRE will assist DOGM in carrying out DOGM's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between DOGM and other Federal agencies in a timely manner.

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies.

(c) Where OSMRE is assisting DOGM in reviewing the PAP, furnishing to DOGM the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and DOGM.

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program.

(e) Assuming all responsibility for ensuring compliance with any Federal lessee protection board requirement.

4. Review of the PAP: (a) OSMRE and DOGM will coordinate with each other during the review process as needed. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to DOGM.

(b) DOGM will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the operation and reclamation plan portion of the permit application, and any other appropriate portions of the PAP, for compliance with the non-delegable responsibilities of SMCRA and for compliance with the requirements of other Federal laws and regulations.

(d) OSMRE and DOGM will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and DOGM throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish DOGM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, DOGM will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) DOGM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAPs agreed upon by DOGM and OSMRE.

(f) DOGM may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that DOGM advises the operator in the permit that Secretarial approval

of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. DOGM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect a unit of the NPS, DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impacts as set forth under Article X of this agreement.

(i) After making its decision on the PAP, DOGM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over the publicly owned park or historic property included in the NRHP affected by a decision under section 522(e)(3) of SMCRA. A copy of the written findings and the permit will also be submitted to OSMRE.

5. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. OSMRE will have access to DOGM files concerning operations on Federal lands.

D. Review Procedures for Permit Revisions, Amendments, or Renewals: 1. Any permit revision, amendment, or renewal for an operation on Federal lands will be reviewed and approved or disapproved by DOGM after consultation with OSMRE on whether such revision, amendment, or renewal constitutes a mining plan modification. OSMRE will inform DOGM within 30 days of receiving a copy of a proposed revision, amendment, or renewal, whether the permit revision, amendment, or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and DOGM will follow the procedures outlined in paragraphs C.1. through C.5. of this Article.

2. OSMRE may establish criteria to determine which permit revisions, amendments, and renewals clearly do not constitute mining plan modifications.

3. Permit revisions, amendments, or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications under paragraph D.1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph D.2. of this Article will be reviewed and approved following the procedures outlined in paragraphs B.1. through B.5. of this Article.

Article VII: Inspections

A. DOGM will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the Program.

B. DOGM will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSMRE a legible copy of the completed State inspection report.

C. DOGM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than SMCRA.

D. OSMRE will ordinarily give DOGM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DOGM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger of significant, imminent environmental harm will be referred to DOGM for action. The Secretary reserves the right to conduct inspections without prior notice to DOGM to carry out his responsibilities under SMCRA.

Article VIII: Enforcement

A. DOGM will have primary enforcement authority under SMCRA concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and DOGM, DOGM will have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. DOGM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where DOGM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action will be based on the standards in the Program, SMCRA, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

D. DOGM and OSMRE will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of DOGM and OSMRE will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

Article IX: Bonds

A. DOGM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Utah and the United States to cover the operator's responsibilities under SMCRA and the Program. Such performance bond will be conditioned upon compliance with all requirements of the SMCRA, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. DOGM will advise OSMRE or annual adjustments to the performance bond, pursuant to the Program.

B. Prior to releasing the operator from any obligation under such bond, DOGM will obtain the concurrence of OSMRE. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights and Compatibility Determinations

A. Unsuitability Petitions.

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either DOGM or OSMRE receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA, or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA are received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, OSMRE will determine whether VER exists for such areas.

For non-Federal lands within section 522(e)(1) areas DOGM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect Federal lands. For such non-Federal lands affecting Federal lands, OSMRE will make the VER determination.

Under section 522(e)(1), for non-Federal lands within the boundaries of the National Park System, DOGM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect the Federal interest. For such non-Federal lands within the boundaries of the National Park System which affect the Federal interest, OSMRE will make the VER determination.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSMRE will make the VER determination.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of SMCRA.

3. For Federal lands, DOGM, with the consultation and concurrence of OSMRE, will determine whether any proposed operation will adversely affect units of the National Park System with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA. For such operations adversely affecting units of the National Park System, DOGM, with the consultation and concurrence of OSMRE, will make the VER determination.

For Federal lands, DOGM will determine whether any proposed operation will adversely affect all publicly owned parks other than those covered in the preceding paragraph and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Places, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA.

For Federal lands other than those on which the proposed operation will adversely affect units of the National Park System, DOGM will make the VER determination for operations which are prohibited or limited by section 522(e)(3) of SMCRA. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where a proposed operation will adversely affect a unit of the NPS, DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations and activities will be permitted unless jointly approved by DOGM and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

4. DOGM will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e) (4) and (5) of SMCRA as unsuitable for mining. For operations on Federal lands, DOGM will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DOGM and the Department will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than SMCRA or their regulations, including but not limited to those listed in Appendix A.

Dated: _____

Signed: _____

Governor of Utah

Dated: _____

Signed: _____

Secretary of the Interior

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.
6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

10. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
11. Executive Order 11988 (May 24, 1977), for flood plain protection.
12. Executive Order 11990 (May 24, 1977), for wetlands protection.
13. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.
14. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*
15. The Constitution of the United States.
16. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*
17. 30 CFR Chapter VII.
18. The Constitution of the State of Utah.
19. Utah Code Annotated 40-10-1 *et seq.*
20. Utah Code Annotated 40-8-1 *et seq.*
21. Utah Coal Mining and Reclamation Permanent Program, Chapters I and II, Final Rules of the Board of Oil, Gas and Mining, UMC/SMC 700 *et seq.*

[52 FR 7850, Mar. 13, 1987]

PART 946—VIRGINIA

Sec.
946.1 Scope.
946.10 State regulatory program approval.
946.11 Conditions of State regulatory program approval.
946.12 State program provisions and amendments disapproved.
946.13 State program provisions set aside.
946.15 Approval of regulatory program amendments.
946.16 Required regulatory program amendments.
946.20 Abandoned mine land reclamation plan approval.
946.25 Amendments to approved Virginia abandoned mine land reclamation plan.
946.30 State-Federal Cooperative Agreement.

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

§ 946.1 Scope.

This part contains all rules applicable only within Virginia that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 61114, Dec. 15, 1981]

§ 946.10 State regulatory program approval.

The Virginia regulatory program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on August 13, 1981, and as clarified in a meeting with OSMRE on September 21 and 22, 1981, and in a letter to the director of the Office of Surface Mining on October 15, 1981, is conditionally approved, effective December 15, 1981. Effective January 1, 1985, the Department of Mines, Minerals and Energy replaces the Department of Conservation and Economic Development as the regulatory authority in Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Copies of the approved program as amended are available for review at the following locations:

(a) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219.

(b) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219.

[51 FR 42554, Nov. 25, 1986, as amended at 59 FR 17930, Apr. 15, 1994]

§ 946.11 Conditions of State regulatory program approval.

The approval of the Virginia State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

[46 FR 61114, Dec. 15, 1981, as amended at 47 FR 31550, July 21, 1982; 47 FR 55678, Dec. 13, 1982; 48 FR 25186, June 6, 1983; 48 FR 46031, Nov. 11, 1983; 49 FR 19478, May 8, 1984]

§ 946.12 State program provisions and amendments disapproved.

(a) The following provisions are disapproved effective April 22, 1983: Paragraphs 3.01(a)(1), 3.01(a)(4) and 3.01 (a)(5) of the Virginia Coal Surface Mining and Reclamation Regulations for Operations Disturbing Two Surface Acres or Less.

(b) The following provisions of the coal surface mining reclamation regulations promulgated pursuant to Chapter 19, Title 45.1 of the Code of Virginia