



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No: WY-045-FOR; Docket ID: OSM-2013-0002;
S1D1S SS08011000 SX064A000 189S180110;
S2D2S SS08011000 SX064A000 18XS501520]

Wyoming Regulatory Program

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

ACTION: Final rule; approval of amendment with certain
exceptions.

SUMMARY: We are issuing a final decision on an amendment to the Wyoming regulatory program (the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Our decision approves in part and disapproves in part the amendment. Wyoming proposes both revisions of and

additions to its coal rules and regulations concerning ownership and control, adds a provision concerning variable topsoil depths during reclamation, and addresses four deficiencies that were identified by the Office of Surface Mining Reclamation and Enforcement (OSMRE) during the review of a previous program amendment (WY-038-FOR; Docket ID No. OSM-2009-0012). Wyoming revised its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

DATES: The effective date is [Insert date 30 days after date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

- I. Background on the Wyoming Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSMRE's) Findings
- IV. Summary and Disposition of Comments

V. OSMRE's Decision

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I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a) (1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, Federal Register (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Submission of the Proposed Amendment

By letter dated January 8, 2013, Wyoming sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM-2013-0002) under SMCRA (30 U.S.C. 1201 et seq.). Wyoming submitted the amendment to address required rule changes OSMRE identified in a letter to Wyoming dated October 2, 2009, under 30 CFR 732.17(c) ("732 letter"). These included changes to Wyoming's rules for ownership and control. The amendment also adds a provision concerning variable topsoil depths during reclamation, addresses four deficiencies that OSMRE identified in response to Wyoming's formally submitted revegetation rule package (WY-038-FOR; Docket ID No. OSM-2009-0012), and corrects numerous inaccurate citations to other sections of Wyoming's rules and regulations.

We announced receipt of the proposed amendment in the February 26, 2013, Federal Register (78 FR 13004). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Document ID No. OSM-2013-0002-0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 28, 2013. We received comments from two Federal agencies (discussed under "IV.

Summary and Disposition of Comments”).

During our review of the amendment, we identified concerns regarding Wyoming’s proposed rule changes in response to the October 2, 2009, 732 letter including the omission of the term “surface” in its newly-proposed definition of “Control or Controller” at Chapter 1, Section 2(aa), the title for Chapter 2 of its rules concerning permit application requirements, and its revised rule at Chapter 2, Section 2(a)(ii)(A)(I) regarding the requirement that permit applications contain a complete statement of compliance; revisions to its rules concerning adjudication requirements and identification of interests at Chapter 2, Section 2(a)(i)(B); its rules at Chapter 12, Section 1(a)(x)(D)(I) regarding unanticipated events or conditions at remining sites; its final compliance review requirements at Chapter 12, Section 1(a)(viii)(B); its provisions concerning written agency decisions on challenges to ownership or control listings or findings at Chapter 12, Section 1(a)(xiv)(F); and its transfer, assignment, or sale of permit rights requirements at Chapter 12, Section 1(b)(ii). We notified Wyoming of these concerns by letter dated April 9, 2013 (Administrative Record Document ID No. OSM-2013-0002-0012).

We delayed final rulemaking to afford Wyoming the opportunity to submit new material to address the deficiencies. Wyoming responded in a letter dated July 2, 2013, that it could not currently submit additional formal revisions to the amendment due to the administrative rulemaking requirements for promulgation of revised substantive rules (Administrative Record Document ID No. OSM-2013-0002-0013). Specifically, Wyoming explained that the required changes would be considered substantive in nature and therefore the Department of Environmental Quality's (DEQ) Land Quality Division (LQD) is required to present the proposed rules to the LQD Advisory Board and then the Wyoming Environmental Quality Council for vetting. Following approval by the Governor, the rules may be submitted to OSMRE for final review. Wyoming could not submit formal changes, but it did submit informal responses to OSMRE's noted concerns. Therefore, we are proceeding to the final rule Federal Register document. Our concerns and Wyoming's responses thereto are explained in detail below.

III. OSMRE's Findings

30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR

732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR Part 700. In 30 CFR 730.5, OSMRE defines "consistent with" and "in accordance with" to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act, and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with certain exceptions as described below.

A. Minor Revisions to Wyoming's Rules.

Wyoming proposed minor punctuation, grammatical, and codification changes to the following previously-approved rules. Many of the codification changes correct inaccurate citations and cross-references that resulted from Wyoming's proposed rule changes. No substantive changes to the text of these regulations were

proposed. Because the proposed revisions to these previously approved rules are minor, we are approving the changes and find that they are no less effective than the corresponding Federal regulations at 30 CFR Parts 700 through 887.

Chapter 2, Section 1(c)(v); minor grammatical and citation cross-reference changes;

Chapter 2, Section 3(c)(iii)(F), and (f); citation cross-reference changes;

Chapter 2, Section 3(i)(i)(A); minor grammatical change;

Chapter 2, Section 5(a)(viii)(B)(II) and (C); citation cross-reference changes;

Chapter 2, Section 5(a)(ix)(D)(I)(1.) and (2.); (II)(1.) and (2.); and (xvi)(A)(IV); citation cross-reference changes;

Chapter 2, Section 6(b)(iv)(A); citation cross-reference change;

Chapter 4, Section 2(c)(xi)(G)(II)(1.) (c.) and (xii)(A)(I); citation cross-reference changes;

Chapter 4, Section 2(d)(i)(J); citation cross-reference change;

Chapter 4, Section 2(d)(i)(M)(II); citation cross-reference changes;

Chapter 4, Section 2(d)(ii)(B)(I)(2.) and (D)(II); citation cross-reference changes;

Chapter 4, Section 2(d)(ii)(C)(II); punctuation and citation

cross-reference changes;

Chapter 4, Section 2(f)(iii); citation cross-reference change;

and

Chapter 4, Section 2(i); minor grammar and citation cross-reference changes.

B. Revisions to Wyoming's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations.

1. Wyoming proposes additions and revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations and/or SMCRA. Therefore we are approving them.

Chapter 1, Section 2(i); definition of "Applicant violator system or AVS;" [30 CFR 701.5];

Chapter 1, Section 2(co); definition of "Notice of violation;" [30 CFR 701.5];

Chapter 1, Section 2(cr); definition of "Own, owner or ownership;" [30 CFR 701.5];

Chapter 1, Section 2(cv); definition of "Permit transfer, assignment or sale of permit rights;" [30 CFR 701.5];

Chapter 1, Section 2(ez); definition of "surface coal mining and

reclamation operations;" [30 CFR 700.5];

Chapter 2, Section 1(c); Permit applications; USGS topographic map scale requirement; [30 CFR 777.14(a)];

Chapter 2, Section 2(a)(i)(C) and (D); Permit Applications; adjudication requirements and identification of interests; [30 CFR 778.11(a)(2) and (b)(4)];

Chapter 2, Section 2(a)(i)(E); Permit Applications; adjudication requirements and identification of interests; [30 CFR 778.11(c) and (d)];

Chapter 2, Section 2(a)(ii)(A)(II); Permit Applications; adjudication requirements and statement of compliance; [30 CFR 778.14(a)(2)];

Chapter 2, Section 2(a)(ii)(A)(III); Permit Applications; adjudication requirements and statement of compliance; [30 CFR 778.14(b)];

Chapter 2, Section 2(a)(ii)(B); Permit Applications; adjudication requirements and statement of compliance; [30 CFR 778.14(c)];

Chapter 2, Section 2(a)(iv), (v)(A)(I)(2.) and (III); Permit Applications; adjudication requirements and statement of compliance; [30 CFR 778.15 and 778.16];

Chapter 4, Section 2(c)(v)(A); General Environmental Protection Performance Standards; topsoil, subsoil, and/or approved topsoil substitutes; [30 CFR 816/817.22(d)(1)(i)];

Chapter 4, Section 2(1)(ii)(F); Environmental Protection Performance Standards; unanticipated events or conditions at remining sites; [30 CFR 773.13(b)];

Chapter 12, Section 1(a)(viii); Permitting Procedures; final compliance review; [30 CFR 773.8(a), 773.9(b), 773.10(a) and 773.11(b)];

Chapter 12, Section 1(a)(viii)(A); Permitting Procedures; final compliance review; [30 CFR 773.9(a)];

Chapter 12, Section 1(a)(viii)(C); Permitting Procedures; final compliance review; [30 CFR 773.11(a)];

Chapter 12, Section 1(a)(ix)(A)-(C); Permitting Procedures; entry of information into AVS; [30 CFR 773.8(b) and (c)];

Chapter 12, Section 1(a)(ix)(D); Permitting Procedures; entry of information into AVS post-permit issuance; [30 CFR 774.11(a)(1)-(4)];

Chapter 12, Section 1(a)(ix)(E); Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; [30 CFR 774.11(d)-(h)];

Chapter 12, Section 1(a)(ix)(F); Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; [30 CFR 778.11(e)];

Chapter 12, Section 1(a)(x)(D)(II)-(IV); Eligibility for provisionally issued permits; [30 CFR 773.14(a), (b), and (c)]; Chapter 12, Section 1(a)(xiii)(A)-(C); Permitting Procedures; ownership or control challenges; [30 CFR 773.25(a)-(c)]; Chapter 12, Section 1(a)(xiv)(A) and (B); Permitting Procedures; ownership or control challenges; [30 CFR 773.26(a)-(d)]; Chapter 12, Section 1(a)(xiv)(D) and (E); Permitting Procedures; ownership or control challenges; [30 CFR 773.27(a)-(c)]; Chapter 12, Section 1(a)(xiv)(G)(I)-(IX); Permitting Procedures; improvidently issued coal mining permits; [30 CFR 773.21(a)-(e), 773.22(a)-(g) and 773.23(a)-(d)]; Chapter 12, Section 1(b); Permitting Procedures; procedural requirements relating to permitting applications; [30 CFR 774.17(b)]; and Chapter 16, Section 2(j); Enforcement and AVS; [30 CFR 774.11(b)].

2. Wyoming proposed to remove the term "surface" throughout its rules in Chapters 1, 2, and 4 in an earlier rulemaking action (WY-038-FOR). OSMRE subsequently disapproved Wyoming's proposed deletions in a June 14, 2011, Federal Register notice (76 FR 34816, 34821) because they were less stringent than SMCRA and less effective than the corresponding Federal regulations.

Wyoming now proposes to add the term "surface" back to its rules where it was previously removed. Wyoming's reinsertion of the term "surface" makes the following rules the same as or similar to the corresponding sections of the Federal regulations.

Therefore we are approving them.

Chapter 1 (title); Authorities and Definitions for Surface Coal Mining Operations [30 CFR 701.3 and 701.5];

Chapter 1, Section 2(u)(ii); definition of "Coal exploration;" [30 CFR 701.5];

Chapter 1, Section 2(aw); definition of "Existing structure;" [30 CFR 701.5];

Chapter 1, Section 2(az); definition of "Farm;" [30 CFR 701.5];

Chapter 1, Section 2(br); definition of "Imminent danger to the public;" [30 CFR 701.5];

Chapter 1, Section 2(bz); definition of "Joint agency approval;" [30 CFR 761.17(d)];

Chapter 1, Section 2(ca); definition of "Land use;" [30 CFR 701.5];

Chapter 1, Section 2(cg); definition of "Materially damage the quantity or quality of water;" [30 CFR 701.5];

Chapter 1, Section 2(dd); definition of "Probable hydrologic consequences;" [30 CFR 780.21(f)];

Chapter 1, Section 2(df); definition of "Property to be mined;" [30 CFR 701.5];

Chapter 1, Section 2(ds); definition of "Road(s);" [30 CFR 701.5];

Chapter 1, Section 2(fi); definition of "Trade secret;" [30 CFR 772.15(b) and 773.6(d)(2) and (3)(i) and (ii)];

Chapter 1, Section 3(b)(i) and (c); Applicability; [30 CFR 701.11];

Chapter 2, Section 2(a); Providing applicant and operator information; [30 CFR 778.11(a)];

Chapter 2, Section 2(a)(iv); Status of unsuitability claims; [30 CFR 778.16(a)];

Chapter 2, Section 2(a)(v)(A)(I)(2.); Ground water and surface water quality monitoring; [30 CFR 780.21(i) and (j)];

Chapter 2, Section 2(a)(v)(A)(III); State engineer information (no Federal counterpart); and

Chapter 4 (title); Environmental Protection Performance Standards for Surface Coal Mining Operations [30 CFR Part 816].

3. Chapter 1, Section 2(fs); Definition of "Violation."

Item A.6 of OSMRE's October 2, 2009, 732 letter required Wyoming to adopt a State counterpart to the Federal definition of

"violation," when used in the context of the permit application information or permit eligibility requirements. The 732 letter states that in the 2000 rule (beginning at 65 FR 79605), the term was defined for the first time and separately from "violation notice" to distinguish action or inaction that constitutes a violation from the written notice of violation. The letter further explained that the definition added a new violation type at (2)(v), when the amount [of bond] forfeited and collected is insufficient for full reclamation, the regulatory authority is authorized to order reimbursement of the additional reclamation costs.

In response to Item A.6, Wyoming proposed a new rule at Chapter 1, Section 2(fs) that is substantively identical to the Federal definition of "violation" at 30 CFR 701.5. Wyoming also references its regulations pertaining to permit application information or permit eligibility requirements in proposed Chapter 1, Section 2(fs). Referencing these rules in place of the corresponding Federal requirements in Sections 507 and 510(c) of SMCRA does not render the proposed definition less effective. Similarly, Wyoming references its statutes pertaining to bond forfeiture and cessation orders at W.S. §§ 35-11-421, 422, and 437, respectively. Referencing these statutes in place of the

corresponding Federal regulations in subsections (ii)(B) and (E) does not render the proposed rules less effective. Wyoming also explains in its Statement of Principal Reasons for Adoption (SOPR) that it did not provide a counterpart provision to subsection 2(v)(C) of the Federal definition regarding bond forfeiture sites that are covered by an alternative bonding system because Wyoming does not have an alternative bonding system approved under 30 CFR 800.11(e). Wyoming's proposed definition of "violation" is no less effective than the Federal definition at 30 CFR 701.5 and satisfies Item A.6 of OSMRE's October 2, 2009, 732 letter. Accordingly, we are approving it.

4. Chapter 2, Section 1(a), Chapter 2, Section 2(a)(i)(G), and Chapter 12, Section 1(a)(xi); Certifying and updating existing permit application information.

In response to Item K.1 of OSMRE's October 2, 2009, 732 letter, Wyoming revised its rule at Chapter 2, Section 1(a) and proposed new rules at Chapter 2, Section 2(a)(i)(G)(I)-(III) pertaining to permit application requirements and Chapter 12, Section 1(a)(xi) regarding permitting procedures that allow an applicant who has previously applied for a permit with the regulatory authority and who has information which is already in the AVS to update the

information required under 30 CFR 778.9.

Wyoming's newly-proposed rules at Chapter 2, Section 2(a)(i)(G)-(I)-(III) and Chapter 12, Section 1(a)(xi) include counterpart provisions to 778.9(a)(1)-(3) and (d), respectively. Wyoming's proposed revision to its existing rule at Chapter 2, Section 1(a) includes counterpart language to 778.9(b) that requires an applicant to swear or affirm, under oath and in writing, that all information the applicant provides in an application is accurate and complete. Wyoming also proposed to revise its existing rule to include counterpart language to 778.9(c) which states that the regulatory authority may establish a central file to house the applicant's identity information, rather than place duplicate information in each of the applicant's permit files, and will make the information available to the public upon request.

Wyoming's references to its regulations pertaining to required permit application information are consistent with references in the corresponding Federal requirements and do not render the newly-proposed rules less effective. Wyoming's proposed rule changes, taken together, satisfy the requirements specified in Item K.1 of OSMRE's October 2, 2009, 732 letter and are consistent with and no less effective than the Federal

regulations at 30 CFR 778.9. For that reason, we are approving them.

5. Chapter 2, Section 2(a)(i)(F); Providing applicant and operator information.

Item K.3 of OSMRE's October 2, 2009, 732 letter instructs the reader to "See LQD Rules and Regulations, Chapter 1, Section 2 and Chapter 2, Section 2" regarding counterpart rules to the Federal requirements for providing applicant and operator permit history information at 30 CFR 778.12. The 732 letter indicates that this section was newly added in the 2000 rule and it was constructed from provisions in previous 778.13.

In response to Item K.3, Wyoming proposed new rules at Chapter 2, Section 2(a)(i)(F) that require each application for a surface coal mining permit to contain a complete identification of interests and permit history information required under 30 CFR 778.12.

Wyoming's proposed rule at Chapter 2, Section 2(a)(i)(F) includes counterpart provisions to 778.12(b), and (c), respectively. Wyoming's proposed rule language adds specificity to the extent

that it requires each application for a surface coal mining and reclamation permit contain a list of any pending, current or previous permit applications held by the applicant and the operator's partner or principal shareholders who operate or previously operated a surface coal mining operation during the five year period preceding the date of the application.

Wyoming's proposed rule language in subsection (F) is no less effective than the Federal requirements at 778.12(b) and (c) and satisfies the applicable requirements specified in Item K.3 of OSMRE's October 2, 2009, 732 letter. Accordingly, we are approving it.

6. Chapter 12, Section 1(a)(x)(A)-(C), (xi) and (xii);
Permitting procedures; Permit eligibility determinations.

In response to Item E.6 of OSMRE's October 2, 2009, 732 letter Wyoming proposed new rules at Chapter 12, Section 1(a)(x)(A)-(C), (xi) and (xii) pertaining to permit eligibility determinations required under 30 CFR 773.12.

Wyoming's newly-proposed rules at Chapter 12, Section 1(a)(x)(A)-(C) include counterpart provisions for determining permit eligibility that are substantively identical to the Federal

requirements at 773.12(a) and (b). Wyoming also references its statutes concerning permit eligibility and permanent ineligibility determinations for applicants at W.S. § 35-11-406(n) and (o), respectively. Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(xi) includes counterpart language to the first part of 773.12(c) that requires an applicant to update, correct, or indicate that no change has occurred to existing permit application information required by Chapter 2, Section 2 following approval but prior to issuance of that permit. Lastly, Wyoming proposed a new rule at Chapter 12, Section 1(a)(xii) that includes counterpart language to the second part of 773.12(c) and subsection (d) which states that once the above requirements are met, the DEQ shall request a compliance history report from AVS to determine if there are any unabated or uncorrected violations that affect the applicant's permit eligibility in subsection (x) above. The DEQ shall request this report no more than five business days before a permit is issued. If the applicant is ineligible for a permit the DEQ shall send written notification of the decision and will detail the reasons for ineligibility and include notice of appeal rights.

Wyoming's references to its statutes and regulations pertaining to permit eligibility determinations are consistent with

references in the corresponding Federal requirements and do not render the newly-proposed rules at Chapter 12, Section 1(a)(x)(A)-(C), (xi) and (xii) less effective. Wyoming's proposed rule changes, taken together, satisfy the requirements specified in Item E.6 of OSMRE's October 2, 2009, 732 letter and are consistent with and no less effective than the Federal regulations at 30 CFR 773.12. For that reason, we are approving them.

7. Chapter 12, Section 1(a)(x)(D)(II)-(IV); Eligibility for provisionally issued permits.

In response to Item E.8 of OSMRE's October 2, 2009, 732 letter, Wyoming proposed new rules at Chapter 12, Section 1(a)(x)(D)(II)-(IV) pertaining to eligibility requirements for provisionally issued permits under 30 CFR 773.14.

Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(x)(D)(II) includes counterpart provisions to 773.14(a) regarding provisionally issued permit eligibility for applicants who own or control a surface coal mining and reclamation operation with a notice of violation issued under Chapter 16 of Wyoming's rules for which the abatement period has not yet expired, or a

violation that is unabated or uncorrected beyond the abatement or correction period.

Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(x)(D)(III) includes counterpart language to 773.14(b)(3) and (4) and states that an applicant is eligible for a provisionally issued permit if the applicant is pursuing a good faith challenge to all pertinent ownership or control listings or findings under Chapter 12, Section 1, or administrative or judicial appeal of all pertinent ownership or control listings or findings, or contesting the validity of a violation unless there is an initial judicial decision affirming the listing or finding or the violation, and those decisions remain in force.

Lastly, Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(x)(D)(IV) includes counterpart language to 773.14(b)(1), (b)(2), and (c) and states that a provisionally issued permit will be considered improvidently issued and the Division will begin procedures to suspend or rescind the permit as described in Section 1(a)(xiv)(G) if the violations are not abated within the specified abatement period, or the applicant, operator or operations that the operator or applicant own or control do not comply with the terms of an abatement plan or payment schedule

for fees or penalties assessed. Suspension or rescission proceedings will also be initiated if, in the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review as discussed above affirms the validity of the violation or the ownership or control listing or finding, or if the initial judicial review decision discussed above affirms the validity of the violation or the ownership or control listing or finding.

Wyoming's references to its regulations pertaining to enforcement actions, ownership or control listings or findings, and improvidently issued permits are consistent with references in the corresponding Federal requirements and do not render the newly-proposed rules less effective. Wyoming's proposed rule changes, taken together, satisfy the requirements specified in Item E.8 of OSMRE's October 2, 2009, 732 letter and are consistent with and no less effective than the Federal regulations at 30 CFR 773.14. As a result, we are approving them.

8. Chapter 16, Section 2(h); Post-permit issuance information requirements for permittees.

In response to Item H.2 of OSMRE's October 2, 2009, 732 letter, Wyoming proposed revisions to its rules at Chapter 16, Section 2(h) to require that permittees provide or update all the ownership and control information required under Chapter 2 of its rules within 30 days of issuance of a cessation order as required by 30 CFR 774.12(a). In addition, Wyoming proposed language to be consistent with and no less effective than the Federal counterpart rules at 774.12(b) by stating that information does not need to be provided if a court of competent jurisdiction has granted a stay of the cessation order and that stay remains in effect.

Wyoming also proposed counterpart language to 774.12(c) which requires that within 60 days of any addition, departure or change in position of any person identified in Chapter 2, Section 2(a)(i)(E), the applicant or permittee shall provide the information required by that section and the date of any departure. Wyoming's counterpart provisions to 778.11(c) and (d) appear at Chapter 2, Section 2(a)(i)(E).

Item M of OSMRE's October 2, 2009, 732 letter addressing cessation orders under 30 CFR 843.11(g) notes that prior to the 2000 rule, this section required notification of those identified as owners and controllers when a cessation order was written. The 2000 rule changed the notification requirement from only those identified as owners and controllers, to a general notification of those persons listed in the cessation order that a cessation order has been issued.

In response to Item M, Wyoming proposed to revise its rule at Chapter 16, Section 2(h) by adding counterpart language to 843.11(g) that provides a general written notification to those persons listed or identified as an owner or controller of the operation in the cessation order that a cessation order has been issued.

Wyoming's references to its regulations pertaining to ownership or control information are consistent with references in the corresponding Federal requirements and do not render the newly-proposed rule less effective. Wyoming's proposed rule changes, taken together, satisfy the requirements specified in Items H.2 and M of OSMRE's October 2, 2009, 732 letter and are consistent with and no less effective than the Federal regulations at 30 CFR

774.12 and 843.11(g), respectively. Accordingly, we are approving them.

C. Revisions to Wyoming's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations.

1. Chapters 1 and 2, Omission of the term "Surface."

In a previous rulemaking action, Wyoming proposed to delete the definition of "surface coal mining and reclamation operations" in Chapter 1, Section 2, as well as the word "surface" throughout its rules in Chapters 1, 2, 4 and 5, respectively. OSMRE subsequently disapproved Wyoming's proposed deletions in a June 14, 2011, Federal Register notice (76 FR 34816, 34821).

In response, Wyoming proposed to reinsert its regulatory definition of "surface coal mining and reclamation operations," which was approved in its November 26, 1980, original program approval, and is substantively identical to the Federal definitions found at Section 701(27) of SMCRA and 30 CFR 700.5, respectively. Wyoming also proposed to reinsert the term "surface" in its rules where it had been previously removed.

OSMRE replied in a letter dated April 9, 2013, that in order to maintain consistency with its rules and be no less effective than the corresponding Federal regulations at 30 CFR 701.5 and 778.14(a)(1), Wyoming must also include the term "surface" in its newly-proposed definition of "Control or Controller" at Chapter 1, Section 2(aa). In addition, Wyoming needs to reinsert the phrase "For Surface Coal Mining Operations" in the title for Chapter 2, and include the term "surface" in its revised rule at Chapter 2, Section 2(a)(ii)(A)(I) regarding the requirement that permit applications contain a complete statement of compliance.

Wyoming responded in a letter dated July 2, 2013, and stated that it will add the term "surface" to its rules as directed in the April 9, 2013, concern letter in a future rulemaking.

Based on the discussion above, we are not approving Wyoming's proposed rule changes that omit the term "surface" from its rules. We also acknowledge Wyoming's commitment to reinstate the term in a future rulemaking effort.

2. Chapter 2, Section 2(a)(i)(B); Adjudication Requirements - Identification of Interests.

Item K.3 of OSMRE's October 2, 2009, 732 letter instructs the reader to "See LQD Rules and Regulations, Chapter 1, Section 2 and Chapter 2, Section 2" regarding counterpart rules to the Federal requirements for providing applicant and operator permit history information at 30 CFR 778.12. The 732 letter indicates that this section was newly added in the 2000 rule and it was constructed from provisions in previous § 778.13.

In response to Item K.3, Wyoming proposed to revise its rules at Chapter 2, Section 2(a)(i)(B) to identify additional organizational members in an application for a surface coal mining permit including owners of record of ten (10) percent or more of the business entity in question, as required under 30 CFR 778.11(b).

OSMRE replied in a letter dated April 9, 2013, that Wyoming's proposed rule at Chapter 2, Section 2(a)(i)(B) includes counterpart provisions to § 778.11(b)(1)-(3). In addition, Wyoming's counterpart language to § 778.11(b)(4) is found in proposed subsection (D). The language in these provisions, taken together, are consistent with and no less effective than the Federal regulations at 30 CFR 778.11(b). However, Wyoming's existing rule language in subsection (B) warrants the inclusion

of additional clarifying language to be consistent with and no less effective than both the Federal counterpart rule at 30 CFR 778.12(a) and its proposed rule language in Subsection (F). Specifically, Wyoming needs to revise the language in subsection (B) to read "* * * This shall also include a list of all the names under which the applicant, the applicant's partners or principal shareholders, and the operator and the operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within the five year period preceding the date of submission of the application * * *." Accordingly, we required Wyoming to further revise its proposed rule language to be no less effective than the Federal regulations at 30 CFR 778.12(a).

Wyoming responded in a letter dated July 2, 2013, and stated that it will draft a revised rule to be consistent with the Federal Regulations at 30 CFR 778.12(a) and add the term "surface" as discussed in Finding III.C.1. above in a future rule package.

Therefore, we are not approving Wyoming's revised rule at Chapter 2, Section 2(a)(i)(B). We also acknowledge Wyoming's commitment to revise the proposed rule language as discussed above in a future rulemaking effort.

3. Chapter 12, Section 1(a)(x)(D)(I); Unanticipated Events or Conditions at Remining Sites.

Item E.7 of OSMRE's October 2, 2009, 732 letter under "application and permit review requirements" instructs the reader to "See LQD Coal Rules and Regulations, Chapter 5, Section 7" regarding unanticipated events or conditions at remining sites. Chapter 5, Section 7 of Wyoming's rules includes a section on remining, but does not address permit eligibility and unanticipated events or conditions at remining sites. Consequently, OSMRE required that Wyoming submit counterpart rules to the Federal regulations at 773.13.

In response to Item E.7, Wyoming revised its rules at Chapter 4, Section 2(1)(ii)(F) to include a State counterpart to the Federal regulations at 30 CFR 773.13(b) that addresses permit eligibility and unanticipated events or conditions at remining sites.

Wyoming also revised its rules at Chapter 12, Section 1(a)(x)(D)(I) to include a State counterpart to the Federal regulations at 30 CFR 773.13(a) which provides an exception to permit ineligibility for applicants with unabated violations that result from unanticipated events or conditions on lands eligible

for remining.

OSMRE replied in a letter dated April 9, 2013, that Wyoming's newly-proposed rule language at Chapter 4, Section 2(1)(ii)(F) is consistent with and no less effective than the Federal regulations. However, unlike its newly-proposed rule at Subsection (F), Wyoming does not include the phrase "event or" in its proposed rule language at Chapter 12, Section 1(a)(x)(D)(I) which reads "from an unanticipated condition at a surface coal mining and reclamation operation * * *." Thus, in order to maintain consistency with its own rules and be no less effective than the corresponding Federal regulation at 30 CFR 773.13(a), we required Wyoming to revise the proposed rule language to include the phrase "event or."

Wyoming responded in a letter dated July 2, 2013, and stated that Chapter 4, Section 2(1)(ii)(F) is part of a section that is entitled "unanticipated conditions" and that Subsection (F) is the only location where the "event or" language is found in the rules. For this reason, Wyoming believes that the rules in Chapter 12 follow the broader language of "unanticipated conditions" and therefore does not need the "event or" language as it would appear that this would merely be a synonymous term

for "unanticipated conditions." Accordingly, Wyoming does not agree that the rules in Chapter 12, Section 1(a)(x)(D)(I) are less effective than the Federal counterpart. However, Wyoming agreed that if during the final review the rules are still found less effective than the Federal counterpart, a revision to the rules will be made.

We disagree with Wyoming's rationale for not revising its rules. Specifically, Wyoming's claim that the phrase "event or" is synonymous with the phrase "unanticipated conditions" is erroneous. The Federal regulations at 30 CFR 701.5 define "Unanticipated event or condition" to mean "an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated by the applicable permit." While Wyoming does not have a counterpart definition in its rules, the Federal definition clearly distinguishes between the two terms as demonstrated by the word "or." Moreover, because this phrase has been defined, Wyoming's use of the phrase in its rules must be consistent with its use in the Federal regulations.

Based on the discussion above, we are not approving Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(x)(D)(I). We

also acknowledge Wyoming's willingness to revise the proposed rule language we are disapproving in a future rulemaking effort.

4. Chapter 12, Section 1(a)(viii)(B); Final Compliance Review.

In response to Item E.4 of OSMRE's October 2, 2009, 732 letter, Wyoming revised its rules at Chapter 12, Section 1(a)(viii)(B) to include State counterpart language to the Federal regulations at 30 CFR 773.10(a)-(c) that address an applicant or operator's permit history.

OSMRE replied in letter dated April 9, 2013, that Wyoming's newly-proposed rule language is consistent with and no less effective than the Federal regulations at 773.10(a) and (b). However, Wyoming's proposed rule at subsection (B) warrants the inclusion of additional clarifying language with respect to conducting additional ownership or control investigations to be consistent with and no less effective than the Federal counterpart rule at 30 CFR 773.10(c). Specifically, Wyoming needs to revise its proposed rule to read "* * * if the applicant or operator does not have any previous mining experience, additional ownership or control investigations may be conducted under subsection (ix)(E) below to determine if someone else with

mining experience controls the mining operation; and * * *.” Subsection (ix) (E) of Wyoming’s proposed rules includes counterpart language to 30 CFR 774.11(f) which is referenced in § 773.10(c). Accordingly, we required Wyoming to further revise its proposed rule language to be no less effective than the Federal regulations at 30 CFR 773.10(c). We also required Wyoming to replace the term “regulatory authority” in proposed subsection (B) with the appropriate State reference (e.g., “Division”) in order to maintain consistency throughout its rules.

Wyoming responded in a letter dated July 2, 2013, and stated that it will propose rule language, as detailed in OSMRE’s April 9, 2013, letter to be consistent with the Federal Regulations at 30 CFR 773.10(c), and will add the previously defined clarifier “Division” to be consistent with the rest of the Chapter in a future rulemaking.

Therefore, we are not approving Wyoming’s newly-proposed rule at Chapter 12, Section 1(a) (viii) (B). We also acknowledge Wyoming’s commitment to revise the proposed rule language as discussed above in a future rulemaking effort.

5. Chapter 12, Section 1(a)(xiv)(C); Permitting Procedures; Challenges to Ownership or Control Listings in AVS.

In response to Item F.2 of OSMRE's October 2, 2009, 732 letter, Wyoming revised its rules at Chapter 12, Section 1(a)(xiv)(C) to include a State counterpart provision to the Federal regulations at 30 CFR 773.26(e) that allows a person who is unsure why he or she is shown in AVS as an owner or controller of a surface coal mining operation to request an informal explanation from OSMRE's AVS office. The provision requires a response to such a request within 14 days.

During OSMRE's review of the amendment, we found that Wyoming's proposed rule language clarifies that a person listed in AVS may request an informal explanation from the AVS office at any time, but does not include language requiring a response to such a request within 14 days. Consequently, we are not approving Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(xiv)(C).

6. Chapter 12, Section 1(a)(xiv)(F); Written Agency Decision on Challenges to Ownership or Control Listings or Findings.

In response to Item F.4 of OSMRE's October 2, 2009, 732 letter, Wyoming revised its rules at Chapter 12, Section 1(a)(xiv)(F) to include State counterpart provisions to the Federal regulations at 30 CFR 773.28(a)-(f) that address the requirements for written agency decisions on challenges to ownership or control listings or findings.

OSMRE replied in a letter dated April 9, 2013, that Wyoming's newly-proposed rule language is consistent with and no less effective than the Federal regulations at § 773.28(a)-(d). However, Wyoming's proposed rule requires additional clarifying language with respect to appeals of written decisions to be consistent with and no less effective than the Federal counterpart rule at 30 CFR 773.28(e). Specifically, Wyoming's proposed language merely states that "appeals of written decisions will be administered under the Department's Rules of Practice and Procedure," but does not require that "all administrative remedies be exhausted under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of these Rules and Regulations before seeking judicial review."

Similarly, we noted that the last sentence of proposed subsection (F) is very general and only states that "AVS shall be revised as necessary to reflect these decisions." Consequently, to be consistent with and no less effective than the Federal counterpart rule at 30 CFR 773.28(f) we required Wyoming to further revise subsection (F) to state that, "following the Division's written decision or any decision by a reviewing administrative or judicial tribunal, the Division must review the information in AVS to determine if it is consistent with the decision. If it is not, the Division must promptly revise the information to reflect the decision."

Wyoming responded in a letter dated July 2, 2013, and stated its belief that additional language discussing the exhaustion of remedies or referencing the appropriate Wyoming statutes is unnecessary. In particular, Wyoming explained that W.S. § 35-11-112 of the Environmental Quality Act details the powers and duties of the Environmental Quality Council, including the authority to "conduct hearing in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by the department or any division thereof (W.S. § 35-11-112(a)(iii))." Wyoming also stated that the Rules of Practice and Procedure, as referenced in

the proposed rule language, are the regulations which support the Environmental Quality Act, and notes that W.S. § 35-11-112(f) also requires that "[a]ll proceedings of the council shall be conducted in accordance with the Wyoming Administrative Procedure Act." For these reasons, Wyoming believes that if the sections of the Environmental Quality Act and the rules are read together, they address OSMRE's concerns with regard to the exhaustion of remedies and lack of statutory reference.

We disagree with Wyoming's rationale for not revising its rules. Wyoming's lone reference to the Rules of Practice and Procedure in its proposed rule language is very general and misleading. For example, the exhaustion of administrative remedies is only discussed in the context of informal conferences that are held by the DEQ Director for appeals of decisions, orders, or notices by the LQD Administrator or assessment of penalty by the agency. There is no mention of or discussion regarding judicial review. Moreover, Wyoming's claim that the relational basis between the Environmental Quality Act, the Rules of Practice and Procedure, and the Wyoming Administrative Procedure Act serves to address the issues outlined in the concern letter is overly vague. To the contrary, Wyoming's explanation is precisely why additional clarifying language discussing the exhaustion of administrative

remedies under specific state program procedures prior to seeking judicial review is necessary. We believe that it is not reasonable to expect a casual reader of the regulations to intuitively follow its complicated explanation regarding the relationship between the various Acts and procedures of the program and their application without providing more information. Thus, Wyoming must revise its proposed rule language to address appeals of written agency decisions on challenges to ownership or control listings or findings and require that all administrative remedies must be exhausted under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of its Rules and Regulations before any person who receives a written agency decision can seek judicial review.

Wyoming also agreed that additional language should be added to Chapter 12, Section 1(a)(xiv)(F) to clarify that AVS must be reviewed in light of any decisions by reviewing tribunals to determine whether AVS properly reflected those decisions.

Wyoming stated that draft language addressing this concern will be provided in a future rulemaking and will be consistent with the suggested revisions discussed in the concern letter.

Based on the discussion above, we are not approving Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(xiv)(F) concerning written agency decisions on challenges to ownership or control listings or findings. We also acknowledge Wyoming's commitment to revise the proposed rule language to clarify that the Division must review the information in AVS to ensure consistency with decisions by reviewing administrative or judicial tribunals.

7. Chapter 12, Section 1(b)(ii); Transfer, Assignment or Sale of Permit Rights (TAS).

Item I. of OSMRE's October 2, 2009, 732 letter instructs the reader to "See W.S. 35-11-408" regarding TAS. The 732 letter states that the 2007 rule clarifies at (a) and (d) of 30 CFR 774.17 that at the regulatory authority's discretion, a prospective successor in interest, with sufficient bond coverage, may continue to mine during the TAS process. This recognizes that an acquiring entity only becomes the successor in interest to the rights granted under the permit (under 30 CFR 705.1) after the regulatory authority approves the transfer, assignment, or sale.

In response to the 732 letter, Wyoming proposed to revise its existing rule at Chapter 12, Section 1(b) to apply all procedural requirements of the Act and the regulations relating to review, public participation, and approval or disapproval of permit applications, and permit term and conditions to permit transfer, assignment or sale of permit rights.

Similarly, Wyoming proposed to revise subsection (b)(ii) by applying the requirements imposed by W.S. § 35-11-408 regarding procedures for permit transfers to the assignment or sale of permit rights.

Wyoming also revised subsection (b)(ii)(B) by adding a cross reference to its rules at Chapter 2, Section 2(a)(i) through (iii), which is the counterpart to 30 CFR 778, regarding permit application requirements for all legal, financial, compliance and related information. Finally, Wyoming added language to require that a potential transferee's statement of qualifications include the name, address and permit number of the existing permit holder, which is the counterpart to 30 CFR 774.17(b)(1)(i).

OSMRE replied in a letter dated April 9, 2013, that Wyoming's attempt to apply the "permit transfer" requirements in its

statute at W.S. § 35-11-408 to its proposed revisions to Chapter 12, Section 1(b)(ii) is incomplete because the rules do not address many of the specific application approval requirements for a transfer, assignment, or sale of permit rights at 30 CFR 774.17.

For example, Wyoming's proposed rule changes do not include counterpart provisions to 30 CFR 774.17(b)(2) concerning advertisement requirements for newly-filed applications, subsection (d) regarding criteria for approval by the regulatory authority that allows a permittee to transfer, assign, or sell permit rights to a successor, subsection (e) concerning notification requirements, and subsection (f) regarding continued operation under an existing permit.

In addition, the language in W.S. § 35-11-408 and subsections (b)(ii)(A) and (B) of Wyoming's rules all refer to a "potential transferee" and do not address the assignment or sale of permit rights. Wyoming does not define "potential transferee" in its rules, nor does it have a counterpart to the Federal definition of "successor in interest" at 30 CFR 701.5 as it relates to transfer, assignment or sale of permit rights in 30 CFR 774.17. Accordingly, we required Wyoming to further revise its proposed

rule language by submitting counterpart provisions to the specific transfer, assignment, or sale of permit rights requirements at 30 CFR 774.17(a)-(f). We also recommended that Wyoming submit a counterpart to the Federal definition of "successor in interest" at 30 CFR 701.5.

Wyoming responded in a letter dated July 2, 2013, and agreed that additional revisions to its proposed rule are necessary. Wyoming also stated that it will draft proposed revisions to the rules to address the concerns noted in the concern letter.

Therefore, we are not approving Wyoming's proposed rule changes at Chapter 12, Section 1(b)(ii) concerning TAS. We also acknowledge Wyoming's commitment to revise the proposed rule language as discussed above in a future rulemaking effort.

D. Removal of Required Amendments.

1. Required Amendment at 30 CFR 950.16(u); Public availability of permit applications and confidentiality.

Wyoming's current rule at Chapter 2, Section 4(a)(xvii) regarding procedures for protecting the confidentiality of qualified archeological information was approved by OSMRE in an October 29, 1992, Federal Register (57 FR 48987) notice as being no less effective than the Federal regulations at 30 CFR 773.6(d)(3)(iii). However, in that same notice, we required Wyoming to further amend its regulations regarding procedures, including notice and opportunity to be heard for persons seeking disclosure, to ensure confidentiality of qualified information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application as required by the Federal regulations at 30 CFR 773.13(d)(3). The Federal rules concerning public participation in permit processing were subsequently amended and redesignated as 30 CFR 773.6 in a Federal Register notice dated December 19, 2000 (65 FR 79663). Consequently, the Federal rules addressing confidentiality are now found at 30 CFR 773.6(d)(3).

In response to the required program amendment at 30 CFR 950.16(u), Wyoming proposed in a previous rulemaking action to further revise its rules at Chapter 2, Section 4(a)(xvii) regarding procedures for protecting the confidentiality of qualified archeological information by adding language clarifying that information related to the nature and location of archeological resources on public lands shall be submitted separately from other application materials. Wyoming also proposed language stating that requests to disclose confidential information shall be administered under the Department of Environmental Quality Rules of Practice and Procedure, the Wyoming Public Records Act, and the Wyoming Environmental Quality Act. Wyoming noted in its SOPR that the proposed revision was intended to clarify the procedures and identify the standards that apply to the administration of requests for confidential information that is submitted to the Land Quality Division. We found that although Wyoming's rationale for making the rule change was sound, the proposed language referencing its Public Records Act contained an incorrect citation wherein W.S. §§ 16-4-2001 thru 16-4-2005 (2007) was referenced rather than W.S. §§ 16-4-201 thru 16-4-205 (2007). For this reason, we did not approve Wyoming's proposed rule revision in a June 14, 2011, Federal Register notice (76 FR 34816, 34823) and the required program

amendment at 30 CFR 950.16(u) remained outstanding.

Wyoming has now corrected the previously identified typographical error that resulted in the June 14, 2011, disapproval. We also note that Wyoming's counterpart provisions to 30 CFR 773.6(d)(3) regarding procedures to ensure confidentiality of qualified permit application information can be found in its existing statutes and other rules. For example, W.S. § 35-11-1101(a) of the referenced Wyoming Environmental Quality Act pertains to public availability of records and confidentiality and provides that any records, reports or information obtained under the Wyoming Environmental Quality Act or the rules, regulations and standards promulgated thereunder are available to the public, unless a satisfactory showing is made to the Director by any person that his records, reports or information or particular parts thereof would divulge trade secrets, if made public. If such a showing is satisfactorily made, the Director and administrators shall consider the records, reports or information or particular portions thereof, confidential in the administration of the Act.

In addition, provisions of the referenced Department of Environmental Quality Rules of Practice and Procedure (Chapters 1

and 2 regarding General Rules and Contested Case Proceedings) and the Wyoming Public Records Act (W.S. §§ 16-4-201-205) fully explain the administrative procedures related to requests to disclose confidential information, including notice and opportunity to be heard, that apply to persons both seeking and opposing the disclosure of such information. These statutes and rules, taken together, include procedures that ensure the confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application, and are no less effective than the Federal requirements regarding confidentiality at 30 CFR 773.6(d)(3). For these reasons, we are approving Wyoming's proposed rule change and are removing the required program amendment at 30 CFR 950.16(u).

2. Required Amendments at 30 CFR 950.16(p); Fish and wildlife enhancement measures.

In a July 8, 1992 Federal Register (57 FR 30124), we placed a required program amendment on Wyoming at 30 CFR 950.16(p). The required program amendment discussed two distinct items. The first item required Wyoming to revise its rules at former Chapter 2, Section 3(b)(iv)(A) or otherwise amend its program to specify

that, when fish and wildlife enhancement measures are not included in a proposed permit application, the applicant must provide a statement explaining why such measures are not practicable. The second item required that the rule be revised to clarify that fish and wildlife enhancement measures are not limited to revegetation efforts.

In response to questions from OSMRE regarding the underlying rationale for not revising or amending its rules in response to 30 CFR 950.16(p), Wyoming explained that it informally submitted rule language [in a January 28, 1993, letter] that was intended to resolve the required program amendment. By letter dated April 12, 1993, OSMRE found that the proposed language was less effective than the Federal counterpart regulations, but Wyoming never attempted to revise the language and promulgate it anytime after the 1993 comment letter. Consequently, in a subsequent rulemaking action Wyoming chose not to draft specific language to address the required amendment at 30 CFR 950.16(p). Rather, Wyoming provided additional clarification and suggested that the current requirements of Chapter 2, Section 5(a)(viii)(B) (former Chapter 2, Section 3(b)(iv)(B)) and Chapter 4, Section 2(r) (former Chapter 4, Section 3(o)), respectively, addressed the required program amendment. In a June 14, 2011, Federal Register

notice (76 FR 34816, 34823) we found that that the additional information provided by Wyoming and the accompanying rationale did not address the concerns expressed by OSMRE in the April 12, 1993, comment letter and we did not accept Wyoming's explanation for not revising or amending its rules in response to 30 CFR 950.16(p). Accordingly, the program deficiencies specified in 30 CFR 950.16(p) regarding fish and wildlife enhancement measures remained outstanding.

In response to that disapproval and the required program amendment at 30 CFR 950.16(p), Wyoming now proposes to revise its rules at Chapter 2, Section 5(a)(viii) to require that, when fish and wildlife enhancement measures are not included in a surface coal mining permit application, the applicant shall affirmatively demonstrate why such measures are not practicable. In addition, Wyoming proposes to revise subsection (A) by adding the phrase "and other enhancement measures" to clarify that enhancement of fish and wildlife resources are not limited to revegetation efforts, but also includes the fish and wildlife performance standards found at Chapter 4, Section 2(r) of Wyoming's rules. Wyoming's proposed revisions make its rules at Chapter 2, Section 5(a)(viii)(A) consistent with and no less effective than the Federal regulations at 30 CFR 780.16(b)(3)(ii) and

784.21(b)(3)(ii) respectively, and we are removing the required program amendment at 30 CFR 950.16(p).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. OSM-2013-0002-0001), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies concerned with or having special expertise relevant to the Wyoming program amendment (Administrative Record No. WY-50-03). We received comments from two Federal agencies.

The United States Forest Service (USFS) commented in a February 27, 2013, e-mail response (Administrative Record Document ID No. OSM-2013-0002-0010), and the Mine Safety and Health Administration (MSHA) commented in a March 1, 2013, letter

(Administrative Record Document ID No. OSM-2013-0002-0011).

The USFS responded that its comment is reflective of its role as a Federal land managing agency in the coal permitting process. The USFS then stated its support for the clarification in the formal amendment on using variable topsoil depths to facilitate species diversity during reclamation.

MSHA responded that it reviewed the proposed changes in the formal amendment, concurs with the proposed revisions, and had no further comment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to seek the views of the EPA on the program amendment and obtain the written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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.).

Under 30 CFR 732.17(h)(11)(i), OSMRE requested comments on the amendment from EPA (Administrative Record No. WY-50-03). EPA did

not respond to our request. Because the amendment does not relate to air or water quality standards, written concurrence from the EPA is not necessary.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Although the amendment will not have an effect on historic properties, on January 31, 2013, we requested comments on Wyoming's amendment from the SHPO and ACHP (Administrative Record Nos. WY-50-04 and WY-50-05), but neither responded to our request.

V. OSMRE's Decision

Based on the above findings, we approve, with certain exceptions, Wyoming's January 8, 2013, amendment. We do not approve the following provisions or parts of provisions.

As discussed in Finding No. III.C.1, we are not approving Wyoming's proposed rule changes that omit the term "surface" from

its rules in Chapters 1 and 2.

As discussed in Finding No. III.C.2, we are not approving Wyoming's revised rule at Chapter 2, Section 2(a)(i)(B) concerning requirements for providing applicant and operator permit history information.

As discussed in Finding No. III.C.3, we are not approving Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(x)(D)(I) regarding unanticipated events or conditions at reming sites.

As discussed in Finding No. III.C.4, we are not approving Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(viii)(B) concerning final compliance review of an applicant's or operator's permit history.

As discussed in Finding No. III.C.5, we are not approving Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(xiv)(C) concerning challenges to ownership or control listings in AVS.

As discussed in Finding No. III.C.6, we are not approving Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(xiv)(F)

concerning written agency decisions on challenges to ownership or control listings or findings.

As discussed in Finding No. III.C.7, we are not approving Wyoming's proposed rule changes at Chapter 12, Section 1(b)(ii) regarding Transfer, Assignment or Sale of Permit Rights.

We are removing existing required amendments and approving, as discussed in: Finding No. III.D.1, Chapter 2, Section 4(a)(xvii) concerning public availability of permit applications and confidentiality; and Finding No. III.D.2, Chapter 2, Section 5(a)(viii)(A) concerning fish and wildlife enhancement measures.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 950, which codify decisions concerning the Wyoming program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

Effect of OSMRE'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 change of an approved State program be submitted to OSMRE for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSMRE. In the oversight of the Wyoming program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Wyoming to enforce only the approved provisions.

VI. Procedural Determinations

Executive Order 12630 - Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department determined that this Federal Register notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this Federal Register notice and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Wyoming drafted.

Executive Order 13132 - Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the Wyoming program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in sections 2 and 3 of the Executive Order and with the principles of cooperative federalism set forth in SMCRA. See, e.g., 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the

potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 of May 18, 2001, requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement

because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) et seq.).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant

economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

David Berry,
Regional Director, Western Region

September 19, 2017

Date

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950 - WYOMING

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

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

2. Section 950.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
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* * * * *

January 8,
2013

* *

[Insert date
of
publication
in the
Federal
Register]

Chapter 1 (Title);
Chap. 1, Sec. 2 (i);
Chap. 1, Sec. 2 (u) (ii);
Chap. 1, Sec. 2 (aw);
Chap. 1, Sec. 2 (az);
Chap. 1, Sec. 2 (br);
Chap. 1, Sec. 2 (bz);
Chap. 1, Sec. 2 (ca);
Chap. 1, Sec. 2 (cg);
Chap. 1, Sec. 2 (co);
Chap. 1, Sec. 2 (cr);
Chap. 1, Sec. 2 (cv);
Chap. 1, Sec. 2 (dd);
Chap. 1, Sec. 2 (df);
Chap. 1, Sec. 2 (ds);
Chap. 1, Sec. 2 (ez);
Chap. 1, Sec. 2 (fi);
Chap. 1, Sec. 2 (fs);
Chap. 1, Sec. 3 (b) (i) and
(c);

Chap. 2, Sec. 1(a);
Chap. 2, Sec. 1(c);
Chap. 2, Sec. 2(a);
Chap. 2, Sec. 2(a)(i)(C) -
(E);
Chap. 2, Sec. 2(a)(i)(F);
Chap. 2, Sec. 2(a)(i)(G);
Chap. 2, Sec. 2(a)(ii)(A)
(II) and (III);
Chap. 2, Sec. 2(a)(ii)(B);
Chap. 2, Sec. 2(a)(iv);
Chap. 2, Sec. 2(a)(v)(A)
(I)(2.) and (III);
Chap. 2, Sec. 4(a)(xvii);
Chap. 2, Sec.
5(a)(viii)(A);
Chapter 4 (Title);
Chap. 4, Sec. 2(c)(v)(A);
Chap. 4, Sec. 2(1)(ii)(F);
Chap. 12, Sec. 1(a)(viii);
Chap. 12, Sec. 1(a)
(viii)(A) and (C);
Chap. 12, Sec. 1(a)(ix)(A) -

(F) ;
Chap. 12, Sec. 1(a)(x)(A) -
(C) ;
Chap. 12, Sec. 1(a)(x)(D)
(II) - (IV) ;
Chap. 12, Sec. 1(a)(xi) ;
Chap. 12, Sec. 1(a)(xii) ;
Chap. 12, Sec. 1(a)(xiii)
(A) - (C) ;
Chap. 12, Sec.
1(a)(xiv)(A, B, D, and E) ;
Chap. 12, Sec. 1(a)(xiv)(G)
(I) - (IX) ;
Chap. 12, Sec. 1(b) ;
Chap. 16, Sec. 2(h) ;
Chap. 16, Sec. 2(j) ;
also all minor punctuation,
grammatical, and
codification changes.

§ 950.16 [Amended]

3. Section 950.16 is amended by removing and reserving paragraphs (p) and (u).

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