

the compensation will be provided upon written request. The effective date is April 3, 1995.

On October 27, 1994, the Commission also proposed for comment amendments to Rules 11Ac1-3 and 10b-10.<sup>2</sup> The proposed amendments would require broker-dealers to disclose on confirmations the range of payment for order flow received on a per share basis and to provide a statement that, upon written customer request, additional transaction-specific information will be provided. In new customer and annual account statements, broker-dealers would be required to disclose the range of payment for order flow received on a per share basis, as well as the aggregate amount or estimated value of payment for order flow received on an annual basis. The proposals also would require parallel disclosure for orders subject to internalization/affiliate order routing. Finally, the proposals would require broker-dealers to describe their order-routing policies for all orders, including those that are subject of internalization/affiliate order routing, and describe the extent to which such orders may enjoy price improvement opportunities.

The Division of Market Regulation ("Division") is analyzing the issues raised by the 22 comment letters that were received. A majority of the commenters responding to the proposing release requested that the effective date of any further changes be delayed. Several broker-dealers stated that it would be extremely burdensome for them to make the systems changes required by any additional amendments, given the time and resources demanded by requirements of the newly-adopted changes and the transition to three day settlement. The Division is receiving an increasing number of inquiries from broker-dealers regarding implementation of the adopted rules. Many broker-dealers indicate that systems changes must be made soon in order to be ready for the April 3 effective date. The Division believes that similar systems changes will be necessary to implement any additional requirements based upon the proposed amendments.<sup>3</sup> It would enhance efficiency and reduce costs if broker-dealers could make systems changes at one time rather than potentially be required to make changes twice to

implement payment for order flow requirements. The Commission believes, however, that it is not feasible to have any additional changes take effect on April 3.

Accordingly, the Commission believes that an effective date of October 2, 1995 for Rule 11Ac1-3 and amendments to Rule 10b-10 relating to payment for order flow disclosures, adopted on October 27, 1994 and any additional amendments would promote an orderly adjustment to the enhanced disclosure regime.<sup>4</sup> For the reasons discussed above, the Commission for good cause finds that notice and solicitation of comment regarding the effective date is impracticable, unnecessary, and contrary to the public interest.

### B. SIPC Status Disclosure

In addition, on November 10, 1994, the Commission adopted amendments to Rule 10b-10 which, among other things, require a broker or dealer that is not a member of the Securities Investor Protection Corporation ("SIPC") to affirmatively disclose its non-SIPC status on customer confirmations.<sup>5</sup> This requirement is consistent with the Commission's authority under the Government Securities Act Amendments of 1993 to require government securities broker-dealers, which are excluded from SIPC membership, to disclose that they are not SIPC members rather than require them to become members.<sup>6</sup> Congress

<sup>4</sup>The staff of the Division will not recommend that the Commission take enforcement action under Rule 10b-10, if broker-dealers comply with the requirements of amended Rule 10b-10 as of April 3, 1995. With respect to new customer and annual account statements, broker-dealers may, of course, also elect to comply with the requirements of Rule 11Ac1-3 prior to October 2, 1995.

<sup>5</sup>See Securities Exchange Act Release No. 34962 (Nov. 10, 1994), 59 FR 59612. All broker-dealers registered as government securities brokers and dealers under Section 15C of the Exchange Act, 15 U.S.C. 78o-5, are excluded from SIPC membership. While most brokers and dealers registered with the Commission under Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b) are required to be SIPC members, some of these persons are excluded from SIPC membership, as well. 15 U.S.C. 78ll(12). Among those excluded from SIPC membership under the Securities Investor Protection Act of 1970 are broker-dealers whose business consists exclusively of (a) the distribution of shares of registered investment open-end companies or unit investment trusts, (b) the sale of variable annuities, (c) the business of insurance, or (d) the business of rendering investment advisory services to registered investment companies or insurance company separate accounts. 15 U.S.C. 78ccc(a)(2)(A)(ii).

<sup>6</sup>In a report to Congress, the GAO recommended that government securities brokers and dealers be required to become members of SIPC, or in the absence of membership, disclose that they are not SIPC members. See S. Rep. No. 422, 103rd Cong., 1st Sess. 16 (1993). Congress subsequently amended Section 15C of the Exchange Act to prohibit government securities brokers and dealers from effecting a transaction in any security in

believed that disclosure was the appropriate approach to remedy the gap in SIPC coverage.

When the Commission adopted this amendment, it stated that confirmation disclosure is necessary "to ensure that customers are not led to believe that their accounts are subject to protection beyond what actually is the case \* \* \*."<sup>7</sup> The Commission recognized that in some situations, however, the costs would exceed the benefits of disclosure, and thus, adopted an exclusion from the disclosure requirement for transactions in investment company shares where the investor sends purchase money directly to a non-affiliated transfer agent, custodian, or other designated agent of the issuing investment company.

In a letter dated February 16, 1995, the Investment Company Institute ("ICI") expressed concern about the operational consequences, as well as the policy and investor protection implications of non-SIPC status disclosure, and requested that the Commission consider further amending Rule 10b-10. In addition, the ICI requested that the Commission consider extending the effective date of the amendment to Rule 10b-10 requiring disclosure of non-SIPC status. In the ICI's view, it will be particularly burdensome for mutual fund groups to obtain information about the SIPC status of their underwriters. By letter dated December 19, 1994, the College Retirement Equities Fund raised similar concerns with respect to broker-dealers whose business consists exclusively of the sale of variable annuities.

The Commission, therefore, is postponing the effective date from April 3, 1995 to October 2, 1995 of the Rule 10b-10 amendment pertaining to non-SIPC disclosure by broker-dealers that are excluded from SIPC membership pursuant to Section 3(a)(2)(A)(ii) of the Securities Investor Protection Act of 1970.<sup>8</sup>

Dated: March 10, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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contravention of Commission rules requiring the timely disclosure that a customer's account is not protected by SIPC. See 15 U.S.C. 78o-5(a)(4).

<sup>7</sup>Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612.

<sup>8</sup>15 U.S.C. 78ccc(a)(2)(A)(ii).

The effective date of this provision remains April 3, 1995, however, for all other brokers and dealers.

<sup>2</sup>Securities Exchange Release No. 34903 (October 27, 1994), 59 FR 55014.

<sup>3</sup>In the intervening period, the Commission may also consider further regulatory initiatives regarding payment for order flow in light of the comments received on the proposed amendments, and in light of the pending inquiries into the Nasdaq market by the Commission and the U.S. Department of Justice.

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 950

## Wyoming Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Wyoming regulatory program (hereinafter referred to as the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA). Wyoming is revising its regulations at Appendix B—Wildlife Monitoring, both in response to required amendment at 30 CFR 950.16(aa), and on its own initiative. The amendment is intended to revise the Wyoming program to be consistent with the corresponding Federal regulations and SMCRA.

**EFFECTIVE DATE:** March 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Guy V. Padgett, Telephone: (307) 261-5776.

## SUPPLEMENTARY INFORMATION:

## I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15 and 950.16.

## III. Proposed Amendment

By letter dated November 8, 1994, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. WY-28-01). Wyoming submitted the proposed amendment in response to the required program Amendment at 30 CFR 950.16(aa) and also included a State initiated change. The provisions of its program that Wyoming proposed to revise are: Appendix B—Wildlife Monitoring, Section C and E. On its own initiative, at Section C, the State proposed to modify the requirements for raptor nest status and production success surveys. At Section E and in

response to a required amendment placed on Wyoming's program at 30 CFR 950.16(aa) in the October 7, 1993, OSM rulemaking (58 FR 52232), Wyoming proposed to remove language that would exclude the need to promptly report all observations of migrating and wintering bald eagles or migrating peregrine falcons.

OSM announced receipt of the proposed amendment in the December 6, 1994, **Federal Register** (59 FR 62645), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. WY-28-09). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 5, 1995.

## III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Wyoming on November 8, 1994, is no less effective than the Federal program requirements and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

## 1. Appendix B, Section C Raptor Production, Nest Status and Production Success

As a result of discussions with the U.S. Fish and Wildlife Service (USFWS), the Wyoming Game and Fish Division (WGFD), and mining industry biologists, the Wyoming Land Quality Division (LQD) proposes to modify requirements for raptor nest status and production success surveys. Survey requirements presently include: An annual search within the permit area and within a 1 mile perimeter to locate known and new or previously unrecorded nests; an initial survey in March for golden eagle and great horned owl nests; and mid-May through mid-June survey to locate other new raptor nests and to check the status of known nest. The current program further requires that all nest checks are to be conducted from a distance; that productivity checks shall be conducted on active nests; and that the status and productivity of all nests are to be reported annually.

The changes being proposed by LQD are as follows: Modify the requirement that the golden eagle and great horned owl nest survey be conducted within 1/2 mile of existing mining activities and those mining activities proposed for the coming year on or before mid-February instead of March; require the following three, thorough surveys covering the

entire permit area and within 1 mile: During March to locate golden eagle and great horned owl nests, an April survey to locate nests of most other species, and a survey in mid-May through mid-June to locate new raptor nests and to check the status of all known nests. Also added, is a requirement to conduct follow up visits for previously identified nests timed to facilitate documentation of occupied territories, nest building, incubation and fledgling success according to the biology of the species present and variation in breeding chronology among study areas.

The above modifications and additions add more specificity to Wyoming's survey requirements and provide for more desirable survey dates for gathering data on nests. Earlier identification of nests (i.e., before eggs are laid) will allow early mitigation action and therefore less chance for conflicts with the mining operations. The changes mutually agreed to by the groups involved are not inconsistent with the Federal program requirements. The Director is therefore approving the proposed changes.

## 2. Appendix B, Section E. Federally Listed Threatened and Endangered Species

Wyoming proposes to modify the introductory paragraph of Section E, specifying the requirements for reporting observations of threatened and endangered species, by (1) removing the language that would exclude the need to report observations of migrating and wintering bald eagles or migrating peregrine falcons, and (2) adding language to clarify that reporting observations of Federally listed threatened and endangered species must be to the regulatory authority as required by the LQD regulation at Chapter IV, Section 2.(r)(i)(E), unless otherwise specified by the USFWS in the approved threatened and endangered species plan. Item number (1) above in response to a program amendment placed on the Wyoming program as a result of the October 7, 1993, OSM rulemaking (58 FR 52232), codified at 30 CFR 950.16(aa). The removal of the language to exclude reporting of migrating and wintering bald eagles or migrating peregrine falcons satisfies the required amendment at 30 CFR 950.16(aa). The Director is therefore removing the required amendment from 30 CFR 950.16. Item number (2) above merely provides reference to the specific rule that requires reporting to the regulatory authority unless otherwise specified by the USFWS (the Federal agency responsible for the administration of

threatened and endangered species). The proposed change would make the reporting requirement in the Appendix consistent with the corresponding performance standard at Chapter IV, Section 2.(r)(i)(E), of Wyoming's regulations. In addition, the proposed change is consistent with the corresponding Federal reporting requirement at 30 CFR 816.97(b) and 817.97(b). Based on the above discussion, the Director is approving both modifications to Section E.

#### IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

##### 1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

##### 2. Federal Agency Comments

Pursuant to § 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Wyoming program.

The U.S. Bureau of Mines responded on November 30, 1994, that it had no comment (administrative record No. WY-28-10).

The U.S. Corps. of Engineers responded on December 1, 1994, saying that they found the changes to be satisfactory to their agency (administrative record No. WY-28-11).

The Mine Safety and Health Administration (MSHA) responded on December 16, 1994, that the amendments do not conflict with MSHA's regulations and do not appear to affect the health and safety of the Nation's miners (administrative record No. WY-28-12).

The Bureau of Land Management responded on December 28, 1994, that the monitoring requirements appeared to prescribe a comprehensive and appropriate wildlife monitoring effort, but suggested that a cross check with the minimum data standards prepared for the Regional Coal Teams be made to make sure the State regulations are consistent with those standards. The Wyoming program requires extensive premining data gathering whose level of detail must be determined in consultation with the Wyoming Game and Fish Department and other Federal agencies having responsibility for management or conservation of such environmental activities (Wyoming rule at Chapter II, Section 2., (a), (vi), (G)). A

statement of how the applicant will utilize monitoring methods as specified in Appendix B is required in the permit application (Wyoming rule at Chapter II, Section 2, (b), (vi), (b). Wyoming also has performance standards for Fish and Wildlife reclamation that must be met (Wyoming rule at Chapter IV, Section 2.,(r)) and elsewhere through out Chapter VI). The above requirements for permit application information, monitoring during the mining operation, and carrying out reclamation assure that appropriate consideration and consultation by the agencies responsible is obtained on a site specific basis. In addition, the previously approved Wyoming regulations are no less effective than the corresponding requirements in the Federal regulations. The minimum data standards prepared for the Regional Coal Teams<sub>2</sub>, while certainly providing helpful guidelines, are not required as part of Wyoming's surface coal mining program. Based on the above discussion, the Director is not requiring Wyoming to modify its program in response to the BLM's comments (administrative record No. WY-28-14).

##### 3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Wyoming proposed to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's comments on the proposed amendment (administrative record No. WY-28-05). EPA responded to OSM's request on December 21, 1994, (administrative record No. WY-28-13) that they did not believe there would be any impacts to water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and the ACHP (administrative record Nos. WY-28-04 and WY-28-03). Neither SHPO nor the ACHP responded to OSM's request.

#### V. Director's Decision

Based on the above finding, the Director approves Wyoming's proposed amendment as submitted on November 8, 1994, that modifies Appendix B, Section C, concerning requirements for survey of raptor nest status and production success; and Appendix B, Section E, concerning the reporting of threatened and endangered species when observed. The Director approves the changes as proposed by Wyoming with the provision that they be fully promulgated in identical form as submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 950, codifying decisions concerning the Wyoming program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### VI. Procedural Determinations

##### 1. Executive Order 12866

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

##### 2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

##### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on

proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

**4. Paperwork Reduction Act**

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

**5. Regulatory Flexibility Act**

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 950**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 1995.

**Charles E. Sandberg,**

*Acting Assistant Director, Western Support Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 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 by adding paragraph (v) to read as follows:

**§ 950.15 Approval of amendments to the Wyoming regulatory program.**

\* \* \* \* \*

(v) The following program changes, as submitted to OSM on November 8, 1994, are approved effective March 17, 1995: Appendix B, Section C concerning dates for conducting raptor surveys; and Appendix B, Section E concerning the

reporting of observed migrating and wintering bald eagle or migrating peregrine falcons and observations of other Federally listed threatened and endangered species.

**§ 950.16 [Amended]**

3. Section 950.16 is amended by removing and reserving paragraph (aa).

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**POSTAL SERVICE**

**39 CFR Part 20**

**Implementation of WORLDPOST Priority Letter**

**AGENCY:** Postal Service.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** WORLDPOST Priority Letter (WPL) is a new international mail service designed for correspondence and documents. WPL items receive priority handling in the United States and in destination countries. Initially, the service will be available to 14 destination countries, from specified post offices in seven metropolitan areas. To use WPL, a customer must use either of the two flat-rate envelopes designed for this service and provided by the Postal Service. Interim implementing regulations have been developed and are set forth below for comment and suggested revision prior to adoption in final form.

**DATES:** The interim regulations take effect March 16, 1995. Comments must be received on or before April 17, 1995.

**ADDRESSES:** Written comments should be mailed or delivered to International Product Management, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 5300, Washington, DC 20260-2410. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Janet Mitchell, (202) 268-6095.

**SUPPLEMENTARY INFORMATION:** Under the Universal Postal Convention, international mail items bearing the "express" logo receive priority handling in destination countries. A number of postal administrations take advantage of that provision by offering their customers an international mail service that is based on, but superior to, normal airmail service. In contrast, the only single-piece international service the Postal Service offers that is superior to

airmail is Express Mail International Service (EMS), which is significantly more expensive than airmail. In order to provide its customers with a wider range of international services, the Postal Service is implementing, on a pilot basis, WORLDPOST Priority Letter (WPL).

WPL is an expedited airmail service providing fast, reliable, and economical delivery of all items mailable as letters. Although a WPL item will travel in the normal airmail stream between the United States and the destination country, the item will receive priority handling in the United States and, typically, in the destination country. In the United States, after the item is deposited, the Postal Service will transport it in a dedicated stream to the appropriate gateway for dispatch. Upon arrival in the destination country, the item will also receive priority handling.

Initially, WPL is available to the following 14 countries: Australia, Belgium, Canada, France, Germany, Great Britain, Hong Kong, Japan, New Zealand, Norway, Singapore, Sweden, Taiwan, and The Netherlands. Based on the Postal Service's evaluation of WPL performance during the pilot test, the service may be extended to additional destination countries.

Initially, WPL is available only from specified ZIP Codes in the following seven metropolitan areas: Atlanta, Boston, Dallas/Fort Worth, Los Angeles, Miami, New York, and Washington, DC. The Postal Service chose these initial acceptance sites because of their ability to provide reliable transportation of items deposited there to the WPL gateways, as well as their potential to generate significant WPL volume. Based on the Postal Service's evaluation of WPL performance during the pilot test, the service may be extended to additional acceptance sites.

To use WPL, a customer will be required to place the material being mailed in either the small (5 inches by 8 7/8 inches) or large (9 inches by 11 1/2 inches) WPL envelope provided by the Postal Service. These envelopes bear the appropriate internationally recognized logo for this service. In addition, their colorful design will facilitate recognition of the items by U.S. and foreign postal employees, which will help to ensure that the items receive priority handling.

Rates are based on size (either small or large) and destination as follows:

Destination	Envelope size	
	Small	Large
Western Europe .....	\$3.75	\$6.95