

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 on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on 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), 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; and 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 that 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 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 2002.

Brent T. Wahlquist,
Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 944 is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

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

2. Section 944.15 is amended in the table by adding a new entry in chronological order by November 6, 2002 to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
March 28, 2002	November 6, 2002	Definition of "Water Supply," "State-appropriated Water," and "State-appropriated Water Supply" at Utah Admin. R. 645-100-200; Utah Admin. R. 645-105-310 through -314; R. 645-301-525.130 and -525.700; Utah Admin. R. 645-301-728.350; R. 645-301-860.110 through -860.112; R. 645-400-162; and R. 645-400-319, -322, and -381.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY-029-FOR]

Wyoming Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving a proposed amendment to the Wyoming regulatory program (the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposed revisions to its Coal Rules about groundwater and

surface water hydrology, coal mine waste impoundments, alluvial valley floors and threatened and endangered plant species. The State intended to revise its program to be consistent with the corresponding Federal regulations, provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: November 6, 2002.
FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261-6550, Internet address: *GPadgett@osmre.gov*.

SUPPLEMENTARY INFORMATION:

- I. Background on the Wyoming Program
- II. Submission of the Proposed Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

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, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act"; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." 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 conditions of approval 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 950.11, 950.12, 950.16 and 950.20).

II. Submission of the Proposed Amendment

By letter dated July 20, 2001, Wyoming sent us an amendment to its program (administrative record no. WY-

34-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a December 23, 1985, letter (administrative record no. WY-34-07) that we sent to Wyoming in accordance with 30 CFR 732.17(c), in response to the required program amendments at 30 CFR 950.16(d), (e), (h), (i), (ii)(2), (jj); State Program Amendment disapprovals at 30 CFR 950.12(a)(3) and (4); and to include the changes made at its own initiative. The provisions of its Coal Rules that Wyoming proposed to revise were: (1) Chapter 2, Section 2(a)(vi)(L)(III), water quantity descriptions; (2) Chapter 2, Section 2(a)(vi)(L)(IV), water quality sampling; (3) Chapter 2, Section 2(a)(vi)(L)(iv), surface water information—acidity; (4) Chapter 2, Section 2(a)(vi)(M)(III), sampling and analysis methodology; (5) Chapter 2, Section 2(a)(vi)(M)(III)(4), ground water information; (6) Chapter 2, Section 2(a)(vi)(O), probable hydrologic consequences determination; (7) Chapter 2, Section 2(b)(xi)(D)(I)(1), surface water monitoring plan; (8) Chapter 2, Section 2(b)(xi)(D)(I)(2), surface water monitoring plan contents; (9) Chapter 2, Section 2(b)(xi)(D)(I)(3), impacts of data upon hydrologic balance; (10) Chapter 2, Section 2(b)(xi)(D)(II)(1 and 2), groundwater monitoring plan and contents; (11) Chapter 2, Section 2(b)(xii), probable hydrologic consequences; (12) Chapter 3, Section 2(c)(viii)(D through G), alluvial valley floors; (13) Chapter 4, Section 2(c)(xii)(D)(IV), coal mine waste impoundments; (14) Chapter 4, Section 2(i), surface water and ground water quality and quantity monitoring; (15) Chapter 4, Section 2(i)(i), removes redundant groundwater language; (16) Chapter 4, Section 2(w), to prevent material damage to hydrologic balance outside the permit area; (17) Appendix A, Appendix IV, to change the list of plant species of special concern; (18) Codified Disapproval at 30 CFR 950.12(a)(4), elevations and locations of stations to monitor water quality, quantity, fish and wildlife and air quality; (19) Required Amendment at 30 CFR 950.16(ii)(2), fish and wildlife habitat and shrub density; and (20) Required Amendment at 30 CFR 950.16(jj), shrub standard for grazing land.

We announced receipt of the proposed amendment in the October 11, 2001, **Federal Register** (66 FR 51891). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy (administrative record no. WY-34-10). We did not hold a public hearing or

meeting because no one requested one. The public comment period ended on November 13, 2001. We received comments from one Federal agency.

III. OSM's Findings

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.

A. Revisions to Wyoming's Rules That Contain Language That Is the Same or Similar to the Corresponding Sections of the Federal Regulations

1. Chapter 2, Section 2(a)(vi)(L)(IV), 30 CFR 780.21(b)(2), Surface Water Information—acidity.
2. Chapter 2, Section 2(a)(vi)(O), Probable Hydrologic Consequences (PHC) Determination.
3. Chapter 2, Section 2(b)(xi)(D)(I)(3), Use of Data to Determine Impacts of the Operation Upon Hydrologic Balance.
4. Chapter 3, Section 2(c)(viii)(D through G), Alluvial Valley Floors.
5. Chapter 4, Section 2(c)(xii)(D)(IV), Coal Mine Waste Impoundment.
6. Chapter 4, Section 2(w), Prevention of Material Damage to the Hydrologic Balance Outside of the Permit Area.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

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

1. Chapter 2, Section 2(a)(vi)(L)(III), Water Quantity Descriptions

Wyoming's Coal Rules do not currently require the monitoring of "seasonal flow rates" within a surface water system to be included in a mine permit application. We pointed this out to Wyoming in a 30 CFR part 732 letter dated December 23, 1985, and cited the Federal rules at 30 CFR 780.21(b)(2).

Wyoming is now proposing to add, "Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates * * *." With the addition of seasonal flow rates, this Wyoming regulation is as effective as its Federal counterpart.

2. Chapter 2, Section 2(a)(vi)(L)(IV), Water Quality Sampling

According to a December 23, 1985, 30 CFR part 732 letter that we sent to Wyoming, Chapter 2, Section 2(a)(vi)(L)(IV) of Wyoming's Coal Rules were less effective than the Federal counterpart rules at 30 CFR 780.21(a). Wyoming is therefore now proposing

new language to correct this problem. Specifically, whereas previously Wyoming's Coal Rules did not specify that all water quality sampling required water quality data sufficient to identify seasonal variation, the revised rule proposed by Wyoming in this amendment states that, "All surface water-quality sampling and analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 20th edition of 'Standards Methods for the Examination of Water and Wastewater,' or the methodology in 40 CFR Part 136—'Guidelines Establishing Test Procedures for the Analysis of Pollutants,' as amended on January 16, 2001. Contact the Wyoming Land Quality Division for information on how to obtain a copy of either reference materials." The new proposed rule goes on to specify what data is to be included. 40 CFR part 136 gives the procedures for water-quality analyses and, since this is referenced in the revised State rules, the State rule is as effective as the Federal regulation.

3. Chapter 2, Section 2(a)(vi)(M)(III), 30 CFR 780.21(a), Sampling and Analysis Methodology

The Federal regulations at 30 CFR 780.21(a) establish that water quality analyses must be performed according to the "Standard Methods for Examination of Water and Wastewater," or the methodology in 40 CFR parts 136 and 434.

Wyoming's proposal requires the analyses to be performed according to the "Standard Methods for Examination of Water and Wastewater" or 40 CFR part 136. Like 40 CFR part 136, part 434 pertains to the NPDES program. Wyoming states that the Land Quality Division is not responsible for the National Pollutant Discharge Elimination System (NPDES) program in Wyoming; the NPDES program is enforced by Wyoming's Water Quality Division (WQD). OSM understands that WQD will enforce NPDES water quality standards required under SMCRA, either using "Standard Methods * * *" or the methodology 40 CFR Parts 136 and 434.

On this basis Wyoming's provision at Chapter 2, Section 2(a)(vi)(M)(iii) is no less effective than 30 CFR 780.21(a).

4. Chapter 2, Section 2(a)(vi)(M)(III)(4), Ground water information

This revision will require that pH be included as one of the groundwater quality parameters to be measured and incorporated into the permit application because it is required in the Federal regulations at 30 CFR 780.21(b)(1).

Wyoming is doing this pursuant to codified program amendment 30 CFR 950.16(h) that was published in the November 24, 1986, **Federal Register** (51 FR 42209, 42211). The State's proposed rule is no less effective than the Federal counterpart regulation.

5. Chapter 2, Section 2(b)(xi)(D)(I)(1), Surface Water Monitoring Plan

The State's proposal is very similar to its Federal counterpart (30 CFR 780.21(j)(1)) with the exception that it does not specifically mention that the monitored parameters should relate to the effluent limitations at 40 CFR part 434. This omission is irrelevant, however, since the proposed regulation allows the State to determine what parameters are necessary to protect the hydrologic balance, and it can include parameters monitored in the NPDES program if it's deemed necessary.

Therefore, the proposed revised rule is no less effective than its Federal counterpart.

6. Chapter 2, Section 2(b)(xi)(D)(I)(2), Surface-water Plan Contents (30 CFR 780.21(j)(3))

This amendment clarifies the minimum parameters that shall be sampled during monitoring and transfers language currently found in Chapter 4, Section 2(i). In addition, it prescribes quarterly monitoring (unless an alternate frequency is approved by the Administrator of Wyoming's Land Quality Division) but allows operators to keep the results on-site and report them in the annual report. The effectiveness of the alternate frequency is discussed under findings no. B.7 and B.8 below.

7. Chapter 2, Section 2(b)(xi)(D)(II)(1. and 2.), Groundwater Monitoring Plan and Plan Contents (30 CFR 780.21(i)(1)); and

8. Chapter 4, Section 2(i), Surface Water and Groundwater Quality and Quantity Monitoring (30 CFR 780.21(i))

Wyoming's proposal for surface water and ground water monitoring provide that monitoring shall be conducted quarterly unless an alternative frequency appropriate to the monitoring site is approved by the Administrator. The Federal counterpart for both surface and groundwater monitoring requires monitoring every three months.

The Federal regulations also require the monitoring data to be submitted to the regulatory authority every three months. However, we approved Wyoming's Land Quality Division's (LQD) approach to allowing operators to keep the results on-site and report them in the annual report. This approval was

contained in the July 25, 1990, **Federal Register** notice (55 FR 30221, 30225).

In its amendment submission, Wyoming states:

Contrary to the Federal rule, these proposed rules contain language that allows for the Administrator of Wyoming's Land Quality Division (LQD) to approve alternative monitoring frequencies which vary from the three-month requirement prescribed by the U.S. Office of Surface Mining (OSM). The LQD is proposing alternative frequencies in recognition of the seasonal field conditions which occur in Wyoming that can make it difficult, if not impossible, to reasonably access a particular monitoring well location. In addition, the Federal and LQD rules do not make a distinction between wells monitoring undisturbed aquifers and those monitoring spoil recovery areas. Twenty-plus years of water quality and water level measurements collected on Wyoming mines has shown that in general, no useful additional information is obtained by monitoring an undisturbed aquifer quarterly. In selected cases, periodic monitoring (i.e., semi-annual or annual) is sufficient to detect natural or manmade changes to the undisturbed aquifer.

On the other hand, quarterly monitoring of a spoil well, in order to determine rates of recovery and direction flow, may be reasonable given the amount of change that can occur to this recovery area in three months time. On selected areas, there may be instances where it is necessary to require monitoring on a more frequent basis depending on the location and anticipated water changes. Such instances could include monitoring of alluvial wells or wells located in an area of surface water/groundwater interface. The LQD would like the rules to reflect this level of flexibility and afford the operator the opportunity to approach the LQD with the necessary information to apply for approval of alternate groundwater monitoring frequencies.

In our review of the amendment, we asked Wyoming (administrative record no. WY-34-13) for additional explanation of the provisions allowing the Administrator to approve an alternative frequency for surface water and groundwater monitoring. In a letter dated January 17, 2002 (administrative record no. WY-34-14), Wyoming stated:

Groundwater Monitoring

It was not LQD's intention that a less frequent monitoring schedule be accepted by the Administrator unless the operator could justify that the revised schedule would be appropriate. To date, no reduced groundwater monitoring schedules have been approved until at least several years of quarterly data have been collected to ensure the initial estimates of groundwater flow rates and directions and water quality variations over time were "on track" and that a change would not be missed under a reduced monitoring schedule. Changes to a monitoring schedule and the associated justification provided by the operator have been processed as permit changes, e.g., Minor

Revisions, to ensure that the justifications are part of the official permit record.

In the proposed LQD rule, the LQD was implicitly combining 30 CFR 780.21(i)(1) [quarterly monitoring to establish baseline and an operational track record] and 30 CFR 816.41(c)(3) [flexibility to adjust the monitoring schedule] based on mine operations to date. For example, in most alluvial aquifers, a reduced monitoring schedule has not been justified because of frequent water level changes in response to precipitation events. Similarly, as noted in the "Statement of Principal Reasons," it is unlikely that a reduced monitoring frequency would be allowed in a backfill (spoils) well because of on-going recharge. In contrast, in a confined aquifer at depths more than 100 feet below ground surface, a reduced schedule has been appropriate, particularly when no apparent seasonal or other temporal changes have been apparent for many years.

Even when LQD has allowed for a reduction in a mine's ground water monitoring schedule, water level measurements are generally required more frequently than water quality monitoring. In general, a water quality change is the result of a change in groundwater flow direction or rate or a change in recharge/discharge conditions. All of these changes generally impact water levels more rapidly than water quality; therefore, as "insurance," the water level monitoring schedule is reduced. As a further precaution, the monitoring frequency for the entire monitoring network is not reduced uniformly. Again, the frequency needs to be appropriate for the monitored site; wells farther from mining impacts might be monitored less frequently than those closer to projected impacts. The LQD Administrator has required a return to a more frequent monitoring schedule as mining approached a particular area. Such a variation in monitoring frequency is found in *Ground Water Study No. 8, Section 3.3, in Ground Water Information Manual: Coal Mine Permit Applications* (April 1987). This Section contains the following quote:

The frequency measurements in other wells ranged from monthly to annually depending upon location and anticipated water level changes.

Surface Water Monitoring

As indicated on page 13 of the July 20, 2001, Formal Program Amendment letter, an alternate surface water monitoring schedule could be approved in recognition of the climatic conditions that can occur in Wyoming. Many coal operators use an automated sampling system to monitor surface water quantity. As one might expect, there are normally times of the year when the water is frozen, the operator is still required to obtain a sample of the water for the quarterly quality assessment by breaking through the ice layer if possible. It is also of interest to note that most operators who utilize an automated system for quantity sampling take readings from those samplers on a continuous basis when water is flowing.

Permit revisions

Pages 13 and 17 of the Formal Program Amendment letter dated July 20, 2001,

contain the following phrase which was meant to indicate that an applicant would be required to change their permit by formal revision; "and afford the operator the opportunity to approach the LQD with the necessary information to apply for approval of alternate surface water (ground water) monitoring frequencies." This need to "apply" was meant to equate to the revision process. The ability to modify a surface water or groundwater monitoring schedule can only be accomplished if this proposed change has been reviewed by LQD staff and is formally incorporated into the permit.

Conclusion

The LQD believes rules at Chapter 2, Section 2(b)(xi)(D)(I)(2) and (II)(2) provide the same protection of the groundwater and surface water resources as the Federal counterpart rules and therefore are not less effective. The fact that any change to monitoring frequency is done through formal permit revision should alleviate concerns regarding the way in which such things are approved. Additionally, the LQD hydrology staff review all such requests and only agree to a modified monitoring frequency when such modification does not jeopardize their ability to ascertain whether: mining is causing material damage to surface or groundwater systems outside the permit area; water quality and quantity are suitable to support the approved postmining land use; and the water rights of other users are being protected or replaced.

We agree that Wyoming's rules at Chapter 2, Section 2(b)(xi)(D)(I)(2) and (II)(2) provide the same protection for groundwater and surface water resources as the Federal rules at 780.21(i) and (j) and are therefore no less effective.

9. Chapter 2, Section 2(b)(xii), Probable Hydrologic Consequences

In order to make its rule on Probable Hydrologic Consequences determinations no less effective than the Federal rules, Wyoming proposes the addition of the following language to its rule: "The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site." In a 30 CFR part 732 letter dated December 23, 1985, OSM required the State to do this and supplied the exact language to be used (which the State used). The State defines the term "general area" that it uses in this rule in Chapter 1, Section 2(an).

Based on the above, we find the revised State rule to be no less effective than the Federal rules.

10. Chapter 4, Section 2(i)(i), Removes Redundant Groundwater Language

The addition of language to Chapter 2, Section 2(b)(xi)(D)(II)(1 and 2) ["The plan shall provide for the monitoring of

parameters that relate to the suitability of the groundwater for current and approved postmining land uses"] made that language at Chapter 4, Section 2(i)(i) redundant and therefore unnecessary. It is therefore proposed to be eliminated and will not make the State rule less effective than the Federal rule.

11. Appendix A, Appendix IV, to change the State's List of Plant Species of Special Concern

Although not required by Federal regulations, Wyoming lists its endangered and threatened species as well as its candidates for threatened and endangered species in an appendix to its regulations. The status of Wyoming's current list has changed requiring that it be updated in order to be accurate. Specifically, only one plant species had been listed as "threatened" or "endangered." Three other candidates were potential candidates for listing. Now, however, there is one threatened, one endangered and two potential candidates. In addition, Wyoming will add "species of special concern" to its list. This updated list is approved.

12. Chapter 2, Section 2(a)(vi)(J)(VIII), Application Content Requirements for Surface Coal Mining Operations (Disapproval Codified at 30 CFR 950.12(a)(4))

We had codified at 30 CFR 950.12(a)(4) our disapproval of Wyoming's May 1, 1986, regulations at Chapter II, Section 3(a)(vi)(M) regarding the deletion of the locational data requirements for monitoring stations. In an informal submittal dated January 29, 1991, Wyoming asserted that the locational data requirements were present in its current rules at Chapter II, Section 3(a)(vi)(C)(VIII), now renumbered Chapter 2, Section 2(a)(vi)(J)(VIII). In a comment letter dated December 23, 1991, We agreed with Wyoming's explanation that the use of this regulation was the correct counter-part regulation to describe the locational data requirements of baseline data gathering stations, and is no less effective than the Federal regulations. Therefore, Wyoming's regulations at Chapter 2, Section 2(a)(vi)(J)(VIII) are in accordance with the Federal regulations and resolves the disapproval codified at 30 CFR 950.12(a)(4).

13. Required Amendment at 30 CFR 950.16(ii)(2), Fish and Wildlife Habitat and Shrub Density

Chapter 2, section 2(b)(iv)(C) of Wyoming's rules requires a plan to assure revegetation of all affected land in accordance with chapter iv, section

2(d). "The plan shall include the method and schedule of revegetation, including but not limited to species of plants, seeding rates, seeding techniques, mulching requirements or other erosion control techniques, and seeding times to be used in a given area for reclamation purposes. The standards and specifications adopted by the State Conservation Commission for mine reclamation shall be considered by the applicant during the preparation of the reclamation plan whenever practicable. The Wyoming Game and Fish Department (WGFD) shall be consulted and its approval shall be required for minimum stocking and planting arrangements of trees and shrubs, including species composition and vegetative ground cover for crucial and critical habitat. The WGFD shall be consulted for minimum stocking and planting arrangements of trees and shrubs, including species composition and vegetative ground cover for important habitat. The Wyoming Department Of Agriculture shall be consulted regarding croplands and erosion control techniques.

Chapter 4, section 2(d)(x)(e)(iii) of Wyoming's coal rules requires for areas containing designated critical or crucial habitat, the WGFD shall be consulted about, and its approval shall be required for, minimum stocking and planting arrangements of shrubs, including species composition. For areas determined to be important habitat, the WGFD shall be consulted for recommended minimum stocking and planting arrangements of shrubs, including species composition, that may exceed the programmatic standard discussed above.

Federal regulations at 30 CFR 950.16(ii)(2) require Wyoming to revise the rules at chapter 2, section 2(b)(iv)(C), and Chapter 4, section 2(d)(x)(E)(III), to require consultation with and approval by the WGFD of tree and shrub standards for all lands to be reclaimed for "fish and wildlife habitat" land use.

In the August 6, 1996, preamble (61 FR 40738), in discussing the required program amendment at 30 CFR 950.16(ii)(2), we indicated that the rules at Chapter 2, section 2(b)(iv)(C) and Chapter 4, section 2(d)(x)(E)(III) do not require consultation and approval on all surface mined lands to be reclaimed for a "fish and wildlife habitat" land use. The rules require consultation and concurrence on critical habitat and crucial habitat, but they do not require consultation and concurrence on lands to be reclaimed for the fish and wildlife habitat land use. The Federal regulations at 30 CFR 816.116(b)(3)(i)

require, for areas to be developed for the fish and wildlife habitat land use, consultation and concurrence by the State agency responsible for the administration of the wildlife program on minimum stocking and planting arrangements for tree and shrub stocking. To the extent that the State rules at Chapter 2, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III), do not require consultation with and approval by the WGFD on minimum stocking and planting arrangements for tree and shrub stocking on lands to be reclaimed for the fish and wildlife habitat land use, we determined that they were less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i). We approved the rules at chapter II, section 2(b)(iv)(C) and chapter IV, section 2(d)(x)(E)(III) but required Wyoming to revise them to require consultation with and approval by the WGFD of the tree and shrub standards for all lands to be reclaimed for the fish and wildlife habitat land use.

In response to the required amendment, Wyoming responded that this topic was discussed in the April 9, 1996. letter to us. In this letter, Wyoming explained that the Wyoming (Chapter 1, Section 2(bc)(viii) and Federal (30 CFR 701.5) definitions for fish and wildlife habitat are as follows:

Fish and wildlife habitat means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

In the entire state of Wyoming, there is very little habitat which is dedicated wholly or partially to the production, protection or management of species of fish or wildlife. Even habitat considered crucial or critical will in most cases be subject to livestock grazing and a host of recreational uses. Consequently, if limited to this definition, there would be little fish or wildlife habitat in Wyoming because of the multiple use so prevalent here. This fact was recognized by the participants in the shrub standard negotiations hosted by the WGFD. Consequently, Wyoming did not pursue the rule change requested by the required program amendment because it is not applicable to the way that fish and wildlife habitat is designated within the context of reclamation.

As a matter of compromise, all participants in the shrub standard negotiations agreed (including WGFD) that the WGFD would maintain very specific consultation and concurrence on critical and crucial habitats. Whereas, on habitats classified by the WGFD as important, the WGFD would limit their role to that of consultation only. In addition, the Wyoming rules at

Chapter 4, section 2(d)(x)(E)(II) require that approved shrub species and seeding techniques be applied to all remaining grazing lands. This requirement has been part of Wyoming's rules since 1986, when the goal of one shrub per square meter on 10 percent of the affected area superseded the equal shrub density requirement. This requirement for additional seeding of shrubs was added in recognition of the need for shrubs to be applied to all surfaces reclaimed for dual use by wildlife and livestock.

WGFD reviews all reclamation plans proposed by coal operators prior to the approval of such plans. Consequently, the WGFD is consulted on such reclamation plans and is provided the opportunity to comment on proposed plans and request changes as needed. Further, the Wyoming rules also contain an entire section within Chapter 4, outlining the required fish and wildlife performance standards.

Operators must provide detailed information on how they will minimize disturbance and adverse impacts on fish, wildlife and related environmental values and achieve enhancement of such resources where practicable. The LQD relies on the expertise of the WGFD to review an operator's proposal and ask for changes needed to ensure that the above environmental values and enhancements are met.

In addition, the 1980 version of Wyoming's rules (Chapter 4, section 3(d)(6)(A)) required that when wildlife habitat is part of the postmining land use, shrubs and trees shall be returned to a density at least equal to that existing on the area before mining. This language was specifically aimed at the land use and not the designation of the habitat because of the restrictive wording in the definition of fish and wildlife habitat. The current rule at Chapter 4, section 2(d)(x)(E) also acknowledges the use of Wyoming's rangelands by wildlife with the following language: "The postmining density, composition and distribution of shrubs shall be based upon site specific evaluation of premining vegetation and wildlife use."

The State's response concludes that in recognition of the strong role the WGFD already plays in the review of coal mining permits and how reclamation is carried out, the very limiting definition for fish and wildlife habitat and the fact that the WGFD was part of the shrub density negotiations in 1994 and they concurred with all final decisions, the LQD does not feel it is necessary to specifically address the WGFD's role with respect to fish and wildlife habitat. All participants in the shrub density

discussions, as well as the Wyoming Legislature, have indicated that the role of the WGFD in the oversight of Wyoming's coal mine reclamation has been appropriately delineated through the implementing statutes, rules and regulations.

Based on Wyoming's response, we have reevaluated the required program amendment. The currently approved shrub density standards are applicable to all grazing lands (the predominant postmining land use in Wyoming) where shrubs existed prior to mining. As stated in the State's definition of grazing land, this land use includes use by wildlife. The approved Wyoming shrub density standards are programmatic standards that were developed in consultation with and concurrence from the WGFD. WGFD consultation and concurrence is required for minimum planting and stocking arrangements of shrubs, including species composition, for areas containing critical and crucial wildlife habitat. It is our experience that in the West the vast majority of the reclaimed land is subject to multiple use by both livestock and wildlife. In such cases, the lands could be subject to the revegetation success standards of cover, production and shrub density. Under the Wyoming program, these multiple use lands would be defined as having a grazingland land use. These lands would be subject to the programmatic shrub density standards that were developed in consultation with, and with approval of, the WGFD also using the cover and production standards. The effect is the same.

In addition, the Wyoming LQD has a Memorandum of Understanding (MOU) with WGFD (administrative record no. WY-34-11). The MOU clearly defines the roles and responsibilities of both the agencies and provides procedures for timely disposition of issues regarding the effects of mining and reclamation activities on fish, wildlife, and their habitats in Wyoming. This provides further assurance that WGFD actively participates in the protection of fish and wildlife habitat in Wyoming.

Based on the information provided by Wyoming and the record on development of the existing programmatic shrub density, we have determined that Wyoming's program is consistent with and no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i) and remove the required program amendment at 30 CFR 950(ii)(2).

14. Required Amendment at 30 CFR 950.16(jj), Shrub Standard for Grazing Land

In 1995 Wyoming revised its regulations at Chapter 1, section 2(bc)(xi) to define "treated grazing land" as grazing land which has been altered to reduce or eliminate shrubs provided such treatment was applied at least five years prior to submission of the state program permit application. However, grazing land altered more than five years prior to submission of the state program permit application on which full shrubs have reestablished to a density of at least one per nine square meters does not qualify as treated grazing land.

In the August 6, 1996, preamble (61 FR 40740), in discussing the approval of the "treated grazing land" definition with a required program amendment at 30 CFR 950.16(jj), we indicated that we were requiring Wyoming to clarify the revegetation standard for grazingland that is affected after the date of our approval and that was treated less than 5 years prior to the submission of the permit application.

As set forth in the proposed definition for "treated grazing land" at Chapter 1, section 2(bc)(xi), grazing land that is disturbed after the date of our approval of these rules and that was treated less than 5 years prior to the submission of the permit application is not "treated grazing land." As set forth in the definition for "eligible land" at Chapter 1, section 2(ac), this grazing land is eligible land that is subject to the shrub standard set forth at chapter 4, Section 2(d)(x)(E), which at subsection (I) states that "[e]xcept where a lesser density is justified from premining conditions in accordance with Appendix A, at least 20 percent of the eligible land shall be restored to shrub patches supporting an average of one shrub per square meter."

The preamble indicates that given Wyoming's rationale that it wanted to take away any incentive for an operator to reduce premining shrub densities so that fewer shrubs would have to be established on reclaimed grazinglands, it is not likely that Wyoming intended that the postmining shrub reestablishment standard could be a lesser density than was based on the premining, treated condition. Even so, the language of the rules could be interpreted to allow this. Alternatively, it's possible that Wyoming intended that any operator treating grazing land less than 5 years prior to the submission of the permit application would then automatically have to reclaim to the maximum standard of at least one shrub

per square meter on 20 percent of the eligible land.

There is no direct counterpart definition for "treated grazing land" in the Federal regulations. However, 30 CFR 816.116(b)(1) requires that standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, for areas developed for use as grazingland, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or "such other success standards approved by the regulatory authority."

The preamble (61 FR 40740) concluded that because Wyoming's rules are unclear as to the shrub reestablishment standard for grazingland that is affected after the date of our approval and that was treated less than 5 years prior to the submission of the permit application, we found that Wyoming's proposed definition for "treated grazing land" at chapter 1, section 2(bc)(xi), as applied in conjunction with the proposed definition for "eligible land" at Chapter 1, section 2(ac), the proposed rule at Chapter 4, section 2(d)(x)(E)(I), and appendix A to the rules at section VIII.E, did not clearly satisfy for this class of grazing land the Federal regulation at 30 CFR 816.116(b)(1)—that requires the regulatory authority to set standards of revegetation success for areas developed for grazing land. Therefore, we required Wyoming to revise the definition for "treated grazing land" at chapter 1, section 2(bc)(xi), to otherwise revise its rules, or to provide us with a policy statement, clarifying the shrub standard for grazingland that is affected after the date of our approval and that was treated less than 5 years prior to the submission of the permit application.

In response to the required amendment Wyoming does not propose to change any rules to address this question. Instead, the following policy has been adopted by the LQD. This policy was presented at a public workshop sponsored by the LQD held on September 30 and October 1, 1996. The purpose of this workshop was to explain the shrub density standard to coal operators, consultants and LQD staff members.

If native acreage is disturbed in any way which removes shrubs between the August 6, 1996, OSM approval date and less than five years before the acreage is submitted as part of a coal permit application or coal permit amendment application, the shrub density existing on adjacent, undisturbed and representative lands will be used as the premine shrub density for this same acreage. This policy will be applied regardless of

whether the disturbance was intentionally or accidentally applied (e.g., controlled burn, herbicide spraying or lightning strike). If this representative, undisturbed area was not sampled for shrub density and composition by the applicant as part of the application process, this same applicant will be required to sample the representative, undisturbed area.

In the regulations at 30 CFR 950.16(jj), we clearly allow the use of a policy statement to address the required amendment. For areas disturbed in any way that removes shrubs between the August 6, 1996, OSM approval date and less than five years before the acreage is submitted as part of a coal permit application or coal permit amendment application, the Wyoming policy statement clearly sets a shrub density standard based on the shrub density of adjacent, undisturbed representative lands. This adequately addresses our concern and resolves the outstanding required amendment. As proposed, the policy statement makes the definition of "treated grazing land" no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment on July 26, 2001 (administrative record no. WY-34-6), but received none.

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 with an actual or potential interest in the Wyoming program (administrative record no. WY-34-6).

We subsequently received a September 18, 2001, letter from Marvin W. Nichols, Jr., Administrator for Coal Mine Safety, with the Department of Labor's Mine Safety and Health Administration (MSHA) (administrative record no. WY-34-9).

MSHA stated that only changes to Chapter 4 of the Wyoming Rules have any impact on the activities of MSHA, that they don't conflict with MSHA's requirements, and that some of Wyoming Rules have restrictions greater than MSHA's.

Wyoming having greater restrictions than MSHA, however, presents no problem.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a 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), we requested comments on the amendment from EPA (administrative record no. WY-34-5). EPA did not respond to our request.

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. On July 26, 2001, we requested comments on Wyoming's amendment (administrative record no. WY-34-4), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Wyoming sent to us.

We approve, as discussed in: finding no. 9, Chapter 2, Section 2(a)(vi)(L)(III) concerning water quantity descriptions; finding no. 10, Chapter 2, Section 2(a)(vi)(L)(IV), concerning water quality sampling; finding no. 1, Chapter 2, Section 2(a)(vi)(L)(v), concerning dissolved and suspended solids; finding no. 2, Chapter 2, Section 2(a)(vi)(M)(III), concerning sampling and analysis methodology; finding no. 11, Chapter 2, Section 2(a)(vi)(M)(III)(4), concerning ground water information; finding no. 3, Chapter 2, Section 2(a)(vi)(O), concerning probable hydrologic consequences determination; finding no. 12, Chapter 2, Section 2(b)(xi)(D)(I)(1), concerning surface water monitoring plans; finding no. 13, Chapter 2, Section 2(b)(xi)(D)(I)(2), concerning surface water plan contents; finding no. 4, Chapter 2, Section 2(b)(xi)(D)(I)(3), concerning impacts of data upon hydrologic balance; finding no. 14, Chapter 2, Section 2(b)(xi)(D)(II)(1 and 2), concerning groundwater monitoring plan and contents; finding no. 5, Chapter 2, Section 2(b)(xii), concerning probable hydrologic consequences determination; finding no. 6, Chapter 3, Section 2(c)(viii)(D through G), concerning alluvial valley floors; finding no. 7, Chapter 2, Section 2(b)(xi)(D)(I)(2); finding no. 14, Chapter 2, Section 2(b)(xi)(D)(XII)(1 and 2); finding no. 16, Chapter 4, Section 2(i)(i), concerning the removal of redundant groundwater language; finding no. 8, Chapter 4, Section 2(w), concerning the prevention of material damage to hydrologic

balance outside the permit area; finding no. 17, Appendix A, Appendix IV, concerning a change in the list of plant species of special concern; finding no. 18, 30 CFR 950.12(a)(4), concerning why the codified required amendment for elevations and locations of stations to monitor water quality * * * should be removed; finding no. 19, 30 CFR 950.16(ii)(2), concerning why the codified required amendment for fish and wildlife habitat and shrub density should be removed; and finding no. 20, 30 CFR 950.16(jj), concerning why the codified disapproval for the shrub standard for grazing land should be removed.

To implement this decision, we are amending the Federal regulations at 30 CFR part 950, which codify decisions concerning the Wyoming program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Wyoming program demonstrates that Wyoming has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of Wyoming and Federal standards.

Effect of OSM'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 OSM 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 OSM. 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 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 regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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 because each 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 1255) 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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

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

On May 18, 2001, the President issued Executive Order 13211 which 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 SMGRA (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)).

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.*).

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), 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; and (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.

Dated: September 13, 2002.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 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 November 6, 2002 to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
July 20, 2001	November 6, 2002	Ch. 2, Sec. 2(a)(vi)(L)(III); Ch. 2, Sec. 2(a)(vi)(L)(iv); Ch. 2, Sec. 2(a)(vi)(M)(III); Ch. 2, Sec. 2(a)(vi)(M)(III)(4); Ch. 2, Sec. 2(a)(vi)(O); Ch. 2, Sec. 2(b)(xi)(D)(I)(1); Ch. 2, Sec. 2(b)(xi)(D)(I)(2); Ch. 2, Sec. 2(b)(xi)(D)(I)(3); Ch. 2, Sec. 2(b)(xi)(D)(II)(1 and 2); Ch. 2, Sec. 2(b)(xii); Ch. 3, Sec. 2(c)(viii)(D)-(G); Ch. 4, Sec. 2(c)(xii)(D)(iv); Ch. 4, Sec. 2(i)(i); Ch. 4, Sec. 2(w); Appendix A, Appendix IV; 30 CFR 950.12(a)(4); 30 CFR 950.16(ii)(2); 30 CFR 950.16(jj).

§ 950.16 [Amended]

3. Section 950.16 is amended by removing and reserving paragraphs (ii) and (jj).

[FR Doc. 02-28201 Filed 11-5-02; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Amendment of interim final rule.

SUMMARY: FinCEN is extending the provision in its regulations that temporarily defers, for certain financial institutions, the application of the anti-money laundering program requirements in section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

DATES: This interim final rule is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905-3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622-1927; or the Office

of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622-0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. USA PATRIOT Act Section 352

On October 26, 2001, the President signed into law the USA PATRIOT Act (Pub. L. 107-56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which is codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of