

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 basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

*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 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)).

*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 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 28, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

**PART 917—KENTUCKY**

■ 1. The authority citation for part 917 continues to read as follows:

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

■ 2. Section 917.15 is amended in the table by adding a new entry in chronological order by the date of final publication to read as follows:

**§ 917.15 Approval of Kentucky regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
June 25, 2002	May 8, 2003	KAR 16:090 Sections 1(1), (2), 4, 5(2) and (6) and 18:090 Sections 1(1), (2), 4, 5(2) and (6).

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**DEPARTMENT OF THE INTERIOR**  
**Office of Surface Mining Reclamation and Enforcement**  
**30 CFR Part 950**  
**[WY-030-FOR]**  
**Wyoming Regulatory Program**  
**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

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

**SUMMARY:** We 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 rules about placement of spoil outside the mined-out area, clarification of self-

bonding requirements, approving permit revisions, incremental bonds, incidental operation changes, and termination of jurisdiction to be consistent with the corresponding Federal regulations, provide additional safeguards and clarify ambiguities.

**EFFECTIVE DATE:** May 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: 307/261-6550, Internet address: [GPadgett@osmre.gov](mailto:GPadgett@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background of 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 this Act \* \* \*, and rules and regulations consistent with regulations issued by the Secretary pursuant to this 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 950.10, 950.12, 950.15, and 950.16.

**II. Submission of the Proposed Amendment**

By letter dated April 30, 2002, Wyoming sent us an amendment to its program (Administrative Record No. WY-35-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a November 7, 1988, letter (Administrative Record No. WY-35-05), and a February 21, 1990, letter (Administrative Record No. WY-35-07) that we sent to Wyoming in accordance with 30 CFR 732.17(c), and in response to the required program amendments at 30 CFR 950.16(j, k, n, y, and z) and to include the changes made at its own initiative.

The provisions of Wyoming's Coal Rules that Wyoming proposed to revise are: (1) Chapter 1, Section 2 (by) and

Chapter 13, Section 1(a), (b), and (c), definitions, cross-reference, and guidelines on permit revisions; (2) Chapter 4, Section 2(b)(iv), backfilling, grading, contouring, spoil, topsoil, vegetative and organic material to satisfy the required program amendment at 30 CFR 950.16(n); (3) Chapter 11, Sections 1(a), 2(a), 3(b), 3(c) and 4(a), bond and insurance requirements for surface coal mining operations under regulatory programs, intended to satisfy some of the deficiencies identified by OSM in its November 7, 1988, 30 CFR 732 letter to Wyoming; (4) Chapter 12, Section 1(b), review, public participation, and approval or disapproval of permit applications, permit term and conditions, and Chapter 13, Section 1(d)(iv)(D), probable hydrologic consequences assessment revision or update (changes to both Chapters 12 and 13 are intended to satisfy the program deficiency identified at 30 CFR 950.16(y)); (5) Chapter 12, Section 2(d)(iii), bonding and insurance procedures intended to satisfy the program deficiencies (numbered G-1) contained in the February 21, 1990, 30 CFR part 732 letter we sent to Wyoming; (6) Chapter 15, Section 7, termination of jurisdiction, intended to satisfy the program deficiency (D-1) we sent Wyoming in a February 21, 1990, 30 CFR part 732 letter; (7) Chapter 13, Section 1(d), intended to correct a cross-reference listed as a program deficiency in 30 CFR 950.16(j) [part 2]; and (8) Chapter 13, Section 1(a), concerning alternative methods of permit revision, intended to satisfy the program deficiency listed at 30 CFR 950.16(j) [part 3].

We announced receipt of the proposed amendment in the June 19, 2002, **Federal Register** (67 FR 41656). 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 No. WY-35-10). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 19, 2002. We received "no comment" letters from two Federal agencies, the U.S. Fish and Wildlife Service and the U.S. Mine Safety and Health Administration.

**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. Minor Revisions to Wyoming's Rules*

Wyoming proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

1. Wyoming Coal Rules: Chapter 4, Section 2(b)(iv)(C); Federal rules: 30 CFR 816.102(d), Placement of spoil outside the mined-out area.

In this section, Wyoming has simply removed superfluous wording to more closely follow the Federal requirement at 30 CFR 816.102(d).

Because these changes are minor, we find that they will not make Wyoming's rules less effective than the corresponding Federal regulations.

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

Wyoming proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

1. Wyoming's Coal Rules: Chapter 4, Section 2(b)(iv); Federal rules: 30 CFR 816.1.2(d), backfilling, grading, contouring, spoil, topsoil, vegetative and organic material.

2. Wyoming's Coal Rules: Chapter 12, Section 1(b) and Chapter 13, Section 1(d)(iv)(D); Federal regulations: 30 CFR 774.15(c)(1), review, public participation, and approval or disapproval of permit applications, permit term and conditions, and probable hydrologic consequences assessment revision or update.

3. Wyoming's Coal Rules: Chapter 15, Section 7; Federal regulations: 30 CFR 700.11, termination of jurisdiction and release of bonds or deposits.

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.

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

1. Wyoming's Coal Rules: Chapter 1, Section 2(by) and Chapter 13, Section 1(a), (b) and (c); there is no Federal counterpart; definitions, cross-reference, and guidelines on permit revisions.

There is no Federal definition of "revised mining or reclamation operations," therefore a comparison cannot be made; however, Wyoming is deleting the phrase "except for incidental operation changes," as required in our July 25, 1990, **Federal Register** notice. It is consistent with and

no less effective than the Federal regulations.

2. Wyoming's Coal Rules: Chapter 11, Sections 1(a), 2(a), 3(b), 3(c), 4(a); Federal regulations: 30 CFR 800.23, self-bonding.

Wyoming proposes revisions to its rules governing self-bonding intended to satisfy deficiencies identified by OSM in its letter dated November 7, 1988, under 30 CFR 732.17 requiring amendments to the Wyoming program.

a. Chapter 11, Section 1(a)

Wyoming has proposed to amend the text of Chapter 11, Section 1(a) by revising it to read, “\* \* \* The indemnity agreement is signed by the permittee, and if applicable, the parent company or non-parent corporate guarantor.”

The Federal regulations under 30 CFR 800.5(c) state, “Self bond means an indemnity agreement in a sum certain executed by the applicant and any corporate guarantor made payable to the regulatory authority, with or without a separate surety.”

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it removes an old reference to a Federal agency as a potential guarantor of a self-bond for a coal mining operation. Wyoming's modification of the term “corporate” to “parent” and “non-parent” where applicable clarifies that the definition applies to both a parent and non-parent corporate guarantor. Consequently, as proposed, the minor revisions and clarifications are consistent with and no less effective than the requirements of the Federal regulations.

b. Chapter 11, Section 2(a)(x)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(x) by revising the text to read, “A written guarantee for an operator's self-bond from a parent corporation guarantor, if the guarantor meets conditions of subsections (a)(iv), (vi), (viii) and (ix) of this Section as if it were the operator. Such a written guarantee may be accepted by the Administrator and shall be referred to as a “parent corporate guarantee.”

The Federal regulations at 30 CFR 800.23(c)(1) state, “The regulatory authority may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (b)(1)-(b)(4) of this Section as if it were the applicant. Such written guarantee shall be referred to as a “corporate guarantee.”

The November 7, 1988, 30 CFR part 732 letter directed Wyoming to revise

the text under this section to address the statement that, “The operator must only supply information addressing requirements not met by the parent corporation guarantor.” Wyoming has deleted this sentence, consequently, as proposed, the minor revisions and clarifications are consistent with and no less effective than the requirements of the Federal regulations.

c. Chapter 11, Section 2(a)(x)(A)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(x)(A) by revising the text to read, “If the operator fails to complete the reclamation plan, the parent corporate guarantor shall do so or the parent corporate guarantor shall be liable under the indemnity agreement to provide funds to the state sufficient to complete the reclamation plan, but not to exceed the bond amount.”

The Federal regulations at 30 CFR 800.23(c)(1)(i) state, “If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the regulatory authority sufficient to complete the reclamation plan, but not to exceed the bond amount.”

A comparison of Wyoming's proposed language with that of the Federal regulations finds that Wyoming has added the term “parent corporate” in front of guarantor to clarify which type of guarantor is being referred to in the rule. Consequently, as proposed, the clarification is consistent with and no less effective than the requirements of the Federal regulations.

d. Chapter 11, Section 2(a)(x)(B)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(x)(B) by revising the text to read, “The parent corporate guarantee shall remain in force unless the parent corporate guarantor sends notice of cancellation by certified mail to the operator and to the Administrator at least 90 days in advance of the cancellation date, and the Administrator accepts the cancellation.”

The Federal regulations under 30 CFR 800.23(c)(1)(ii) state, “The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the regulatory authority at least 90 days in advance of the cancellation date, and the regulatory authority accepts the cancellation.”

A comparison of Wyoming's proposed language with the Federal regulations finds that the proposed revisions to Chapter 11, Section 2(a)(x)(B) remove the reference to a Federal agency

guarantor and clarify which type of guarantor is being referred to in the rule. The resulting Wyoming regulations are consistent with, and no less effective than, the Federal regulations.

e. Chapter 11, Section 2(a)(xi)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(xi) by incorporating the following language: “A written guarantee for an applicant's self-bond from any corporate guarantor, whenever the operator meets the conditions of subsections (a)(iv), (a)(vi) and (a)(ix) of this Section, and the guarantor meets the conditions of subsections (a)(iv), (a)(vi), (a)(vii) and (a)(ix) of this Section may be accepted by the Administrator. Such written guarantee shall be referred to as a “non-parent corporate guarantee.” The terms of this guarantee shall provide for compliance with the conditions of subsections (a)(x)(A) and (B) of this Section. The Administrator may require the operator to submit any information specified in subsection (a)(vii) of this Section in order to determine the financial capabilities of the operator.”

The Federal regulations under 30 CFR 800.23(c)(2) state, “The regulatory authority may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (b)(2) and (b)(4) of this section, and the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section. Such a written guarantee shall be referred to as a “non-parent corporate guarantee.” The terms of this guarantee shall provide for compliance with the conditions of paragraphs (c)(1)(i) through (c)(1)(iii) of this section. The regulatory authority may require the applicant to submit any information specified in paragraph (b)(3) of this section in order to determine the financial capabilities of the applicant.”

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it now incorporates the Federal counterpart language addressing the conditions under which the regulatory authority may accept a written guarantee of an operator's self-bond from a third party other than the parent corporation. Therefore, it is no less effective than the Federal regulations.

f. Chapter 11, Section 2(a)(xii)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(xi) by renumbering it as (xii), as a result of creating a new Section (2)(xi), and revising the text to read, “The following in order:

(A) For the Administrator to accept an operator's self-bond, the total amount of the outstanding and proposed self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States, or

(B) For the Administrator to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the parent corporate guarantor's tangible net worth in the United States, or"

The Federal regulations at 30 CFR 800.23(d) state, "For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that Wyoming has added the terms "parent" and "parent corporate" to maintain consistent references in the rules, and has reformatted the manner in which the rules are presented. Consequently, as proposed, the clarification is consistent with and no less effective than the requirements of the Federal regulations.

g. Chapter 11, Section 2(a)(xii)

Wyoming has proposed to amend the text of the newly created Chapter 11, Section 2(a)(xii) by incorporating the following language "(C) For the Administrator to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bond shall not exceed 25 percent of the non-parent corporate guarantor's tangible net worth in the United States."

The Federal regulations at 30 CFR 800.23(d) state, "For the regulatory authority to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it now incorporates the Federal counterpart language addressing the conditions under which the regulatory authority

may accept a non-parent corporate guarantee. Therefore, it is no less effective than the Federal regulations.

h. Chapter 11, Section 3(b)(i)

Wyoming has proposed to amend the text of Chapter 11, Section 3(b)(i) by revising the text to read, "The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent or non-parent corporate guarantor, and shall bind each jointly and severally."

The Federal regulations at 30 CFR 800.23(e)(1) state, "The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that Wyoming has added the term "or non-parent" and deleted the reference to "Federal agency" to clarify that both types of corporate guarantors are being referred to in the rule, and to remove the obsolete reference to a Federal agency. Consequently, as proposed, the clarification is consistent with and no less effective than the requirements of the Federal regulations.

i. Chapter 11, Section 3(b)(ii)

Wyoming has proposed to amend the text of Chapter 11, Section 3(b)(ii) by revising the text to read, "Corporations applying for a self-bond or parent and non-parent corporations guaranteeing an operator's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Administrator along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, all corporate guarantors shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement."

The Federal regulations at 30 CFR 800.23(e)(2) state, "Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the regulatory authority along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating

that the corporation may guarantee the self-bond and execute the indemnity agreement."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it now requires the submission of an affidavit certifying that the agreement is valid under all applicable State and Federal laws, and requires that any grantor provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement. The revised text also deletes the outdated references to a Federal agency guaranty. It is consistent with and no less effective than the Federal regulations.

As a result of the changes made to Chapter 3(b)(ii), Wyoming has also revised their policy memorandum, "Wyoming Environmental Quality Act—Form and Execution of Self-Bonding Indemnity Agreement and Corporate or Federal Agency Guaranty" to remove all references to a Federal Agency Guaranty and to add the requirement that the affidavit certifying the agreement is valid under all applicable State and Federal laws shall also be submitted. The resulting memorandum, "Wyoming Environmental Quality Act—Form and Execution of Self-Bonding Indemnity Agreement and Parent or Non-Parent Corporate Guaranty" is consistent with and no less effective than the requirements of the Federal regulations.

j. Chapter 11, Section 3(c) and Section 4(a)(ii)

Wyoming has proposed to amend the text of the two regulations cited above to change the reference to Section 2(a)(xi) to Section 2(a)(xii).

A comparison of Wyoming's proposed language to the existing language finds that the insertion of a new rule under Chapter 11, Section 2(a)(xi) required that the existing cross-references in these two rules reference the correct subsection. The correct subsection has been referenced and this Wyoming rule is now consistent with and no less effective than the Federal regulations.

3. Wyoming's Coal Rules: Chapter 12, Section 2(d)(iii); Federal regulations: 30 CFR 800.11(b)(4), separate increments within a bonded area.

Wyoming proposes to add a subsection to its regulations and revise its existing regulations to mandate that isolated and independent increments of the permitted mine area be of sufficient size and configuration for efficient reclamation operations, should reclamation by the Wyoming Department of Environmental Quality become necessary.

Federal regulations at 30 CFR 800.11(b)(4) require what Wyoming is proposing here. Therefore, the Wyoming regulations are no less effective than the Federal regulations.

4. Chapter 13, Section 3(a) to read Section 1(d) rather than 1(b) [formerly chapter XIV].

This revision was approved in the August 6, 1996, **Federal Register** but the required program amendment was inadvertently not removed from the Code of Federal Regulations (CFR).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. WY-35-6), 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 with an actual or potential interest in the Wyoming program (Administrative Record No. WY-35-6).

Two Federal agencies commented. David Lauriski of the U.S. Mine Safety and Health Administration, in his May 23, 2002, letter, stated that none of the (rule) changes have a direct impact on employee or public health or safety and that he consequently has no comments. Michael Long of the U.S. Fish and Wildlife Service, in his June 4, 2002, comment, stated that he did not believe that the proposed amended regulations would adversely affect any threatened or endangered species on coal mine permit areas in Wyoming.

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get 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.*).

None of the revisions that Wyoming proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

##### *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 May 5, 2002, we requested comments on Wyoming's

amendment (Administrative Record Nos. WY-35-3 and 4), but neither responded to our request.

#### V. OSM's Decision

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

We approve, as discussed in: finding III.A.1, concerning placement of spoil outside the mined-out area; finding III.B.1, concerning backfilling, grading, contouring, spoil, topsoil, vegetative and organic material; finding III.B.2, concerning review, public participation and approval or disapproval of permit applications, permit term and conditions, and probable hydrologic consequences assessment revision or update; finding III.B.3, concerning termination of jurisdiction and release of bonds or deposits; finding III.C.1, concerning the definition of revised mining or reclamation operations; finding III.C.2.a through j, concerning self-bonding; finding III.C.3, concerning isolated increments of the permitted mine area; and finding III.C.4, concerning the removal from the CFR a revision that was approved in the August 6, 1996, **Federal Register**, but was not removed as a required program amendment from the CFR.

##### *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 regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

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

##### *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 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 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 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)).

*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: February 11, 2003.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

■ 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 950.12 is amended by revising the section heading to read as follows:

**§ 950.12 State program provisions and amendments not approved.**

\* \* \* \* \*

■ 3. Section 950.15 is amended in the table by adding a new entry in chronological order by May 8, 2003 to read as follows:

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

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
April 30, 2002	May 8, 2003	Chapter 1, Section 2(by). Chapter 4, Section 2(b)(iv). Chapter 11, Sections 1(a), 2(a), 3(b), 3(c), 4(a). Chapter 12, Section 1(b), Section 2(d)(iii). Chapter 13, Section 1(a), (b), (c), (d)(iv)(D). Chapter 15, Section 7.

**§ 950.16 [Amended]**

■ 4. Section 950.16 is amended by removing and reserving paragraphs (j), (k), (n), (y) and (z).

[FR Doc. 03-11219 Filed 5-7-03; 8:45 am]

BILLING CODE 4310-05-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[OAR-2002-0045—FRL-7495-6]

RIN 2060-AK53

**National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correcting administrative amendments; change in effective date.

**SUMMARY:** On February 18, 2003, EPA published a direct final rule on the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills (68 FR 7706). The effective date of that direct final rule is May 19, 2003, and remain unchanged, except the amendment adding Incorporation by Reference (IBR) material which must, for administrative purposes, become effective prior to May 19, 2003. This correction moves up the effective date for that amendment, which affects the centralized IBR section for 40 CFR part 63. In addition, the IBR amendment included in the February 18 direct final rule added a new IBR addressing test method ANSI/ASME PTC 19.10-1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]; thus the effective date of this IBR material must also match the effective date of the centralized IBR section. This correction moves up the effective date in 40 CFR 63.865(b)(3) and 40 CFR 63.865(b)(5)(iii).

**DATES:** Effective Dates: The revision of 40 CFR 63.14(i) and the removal of 40 CFR 63.14(j), published on February 18, 2003 (68 FR 7713) are effective May 8, 2003. The IBR amendments to 40 CFR 63.865(b), published on February 18, 2003 (68 FR 7716) are effective May 8, 2003. The IBR of certain publications in the NESHAP is approved by the Director of the Office of the Federal Register on May 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the administration of the IBR, contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539-03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-7946, facsimile number (919) 541-5689, electronic mail (e-mail) address: [eck.janet@epa.gov](mailto:eck.janet@epa.gov). All other inquiries regarding the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills should be addressed to Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504-05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5427, facsimile number (919) 541-5600, e-mail address: [telander.jeff@epa.gov](mailto:telander.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:** An electronic copy of today's notice will be available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. In addition, an electronic version of all of the above mentioned promulgated NESHAP is currently available on the TTN at <http://www.epa.gov/ttn/oarpg/new.html>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Dated: April 29, 2003.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 03-11461 Filed 5-7-03; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 107, 171, 173, 177 and 180**

[Docket No. RSPA-01-10373 (HM-220D)]

RIN 2137-AD58

**Hazardous Materials: Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders; Response to Appeals and Extension of Compliance Dates**

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule; response to appeals.

**SUMMARY:** On August 8, 2002, RSPA published a final rule under Docket No. RSPA-01-10373 (HM-220D) amending the requirements of the Hazardous Materials Regulations applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. The revisions simplified the regulations, responded to petitions for rulemaking, addressed recommendations of the National Transportation Safety Board, and enhanced the safe transportation of hazardous materials in cylinders. In response to appeals submitted by persons affected by the August 8, 2002 final rule, this final rule amends certain requirements, extends certain compliance dates, and makes minor editorial corrections.

**DATES:** *Effective Date:* This rule is effective June 9, 2003.

*Compliance Date:* Delayed compliance dates for certain regulatory provisions are set forth in the regulatory text.

**FOR FURTHER INFORMATION CONTACT:** Sandra Webb, (202) 366-8553, Office of Hazardous Materials Standards or Mark Toughiry, 202-366-4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Background**

On August 8, 2002, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket No. 01-10373 (HM-220D) (67 FR 51625) amending the requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) applicable to the maintenance, requalification, repair, and use of DOT specification cylinders.