

**§ 4.7 [Amended]**

■ 2. Amend § 4.7 by removing from the first sentence of paragraph (b)(2) the words “subject to the effective date provided in paragraph (b)(5) of this section,” and removing paragraph (b)(5).

**PART 122—AIR COMMERCE REGULATIONS**

■ 3. The general authority citation for part 122 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

\* \* \* \* \*

**§ 122.48a [Amended]**

■ 4. Amend § 122.48a by removing from the first sentence of paragraph (a) the words “and subject to paragraph (e) of this section,” and removing paragraph (e).

**PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO**

■ 5. The general authority citation for part 123 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i)), Harmonized Tariff Schedule of the United States (HTSUS), 1431, 1433, 1436, 1448, 1624, 1646c, 2071 note.

\* \* \* \* \*

**§ 123.91 [Amended]**

■ 6. Amend § 123.91 by removing from the first sentence of paragraph (a) the words “and subject to paragraph (e) of this section,” and removing paragraph (e).

**§ 123.92 [Amended]**

■ 7. Amend § 123.92 by removing from the first sentence of paragraph (a) the words “and subject to paragraph (e) of this section,” and removing paragraph (e).

**PART 192—EXPORT CONTROL**

■ 8. The general authority citation for part 192 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

\* \* \* \* \*

**§ 192.14 [Amended]**

■ 9. Amend § 192.14 by removing from the first sentence of paragraph (a) the words “and subject to paragraph (e) of this section,” and removing paragraph (e).

Dated: October 8, 2009.

**Jayson P. Ahern,**  
*Acting Commissioner, Customs and Border Protection.*  
[FR Doc. E9-24668 Filed 10-13-09; 8:45 am]  
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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

[TD 9462]

RIN 1545-BH91

**Disregarded Entities and Excise Taxes; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final and temporary regulations.

**SUMMARY:** This document contains a correction to final and temporary regulations (TD 9462) that were published in the **Federal Register** on Monday, September 14, 2009, clarifying that a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose, but regarded as a separate entity for certain excise tax purposes, is treated as a corporation for tax administration purposes related to those excise taxes.

**DATES:** This correction is effective on October 14, 2009, and is applicable on September 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** Michael H. Beker, (202) 622-3070 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final and temporary regulations that are the subject of this document is under section 7701 of the Internal Revenue Code.

**Need for Correction**

As published on Monday, September 14, 2009 (74 FR 46903), the final and temporary regulations (TD 9462) contain an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the final and temporary regulations (TD 9462), which was the subject of FR Doc. E9-21987, is corrected as follows:

On page 46904, column three, the signature line, the word “Mundace” is corrected to read “Mundaca”.

**Diane O. Williams,**  
*Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. E9-24656 Filed 10-13-09; 8:45 am]  
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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 950**

[SATS No. WY-035-FOR; Docket ID: OSM-2009-0003]

**Wyoming Regulatory Program**

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

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

**SUMMARY:** We are issuing a final decision on an amendment to the Wyoming regulatory program (the “Wyoming program”) under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or “the Act”). Our decision approves in part, disapproves in part and defers in part the amendment. Wyoming proposed revisions to and additions of rules concerning self-bonding requirements (Administrative Record No. WY-40-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment to reflect changes made at its own initiative. Wyoming intends to revise its program to increase the flexibility of its self-bonding program and at the same time not increase the risk to the State.

**DATES:** *Effective Date:* October 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey W. Fleischman, Telephone: 307.261.6550, E-mail address: [jfleischman@osmre.gov](mailto:jfleischman@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’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 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 the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming’s program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

## II. Submission of the Proposed Amendment

By letter dated March 7, 2006, Wyoming submitted a proposed amendment to its program rules concerning self-bonding requirements (Administrative Record No. WY-40-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment to reflect changes made at its own initiative. The provisions of Wyoming’s Coal Rules and Regulations that Wyoming proposed to revise and add were: Chapter 1, Section 2(k), definition of the term “bond;” Chapter 11, Section 2(a)(vii)(A), dealing with self-bonding application informational requirements concerning certain indicators of financial strength of an applicant; Chapter 11, Section 2(a)(xii)(A), dealing with certain self-bonding mandatory criteria, including various ratio measures of financial strength and percent limits of self-bonding obligations versus percent of tangible net worth for operator self-bonding applicants; Chapter 11, Section 2(a)(xii)(B), dealing with certain self-bonding mandatory criteria, including various ratio measures of financial strength and percent limits of self-bonding obligations versus percent of tangible net worth for parent corporate guarantor self-bonding applicants; Chapter 11, Section 2(a)(xii)(D), dealing with self-bonding application informational requirements for self-bonding operator applicants that choose to include assets outside of the United States in establishing their tangible net worth; and Chapter 11, Section 2(a)(xii)(E), detailing information that the regulatory authority will require if it accepts a foreign parent or non-parent corporate guarantee.

We announced receipt of the proposed amendment in the April 21, 2006 **Federal Register** (71 FR 20604), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. WY-40-07). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 22, 2006. We received comments from two mining associations and one Federal agency.

During our review of the amendment, we identified concerns relating to the newly-created provisions of Wyoming’s Coal Rules and Regulations at Chapter 11, Section 2(a)(xii)(D) and (E) that would authorize the Administrator to accept guarantees from foreign companies for self-bonds for domestic mining companies and allow the inclusion of foreign assets as part of a company’s tangible net worth when determining eligibility to guarantee a self-bond. We notified Wyoming of our concerns by letter dated May 26, 2006 (Administrative Record No. WY-40-08).

Wyoming responded in a letter dated June 23, 2006, by submitting additional explanatory information in lieu of changing the proposed rule language, as we suggested in our issue letter (Administrative Record No. WY-40-09).

Based upon Wyoming’s additional explanatory information for its amendment, we reopened the public comment period in the July 31, 2006 **Federal Register** (71 FR 43092); Administrative Record No. WY-40-10). The public comment period ended on August 15, 2006. We received comments from one industry group.

In separate letters dated September 20, 2007 and May 13, 2008, we requested that Wyoming clarify the characterization and meaning of its “Statement of Reasons” and rationale that was submitted in support of the proposed rule changes at Chapter 11, Section 2(a)(xii)(A) and (B) concerning tangible net worth limits (Administrative Record Nos. WY-40-13 and WY-40-15). Wyoming responded to our requests on March 24 and July 1, 2008, respectively (Administrative Record Nos. WY-40-14 and WY-40-16), and are discussed in Finding III.A.3. below.

## III. OSM’s Findings

30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State’s laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR Part 700. In 30

CFR 730.5, OSM defines “consistent with” and “in accordance with” to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

### A. Revisions to Wyoming’s Rules That Are Not the Same as the Corresponding Provisions of SMCRA and/or the Federal Regulations

#### 1. Chapter 1, Section 2(k), Definition of “Bond”

In addition to several format changes, the Wyoming Land Quality Division (LQD), at its own initiative, proposes to revise its rules at Chapter 1, Section 2(k). The currently approved Wyoming provision at Chapter 1, Section 2(k) is in accordance with the Federal counterpart provision at 30 CFR 800.12 and defines “bond” to include surety bonds, letters of credit, cash, or a combination of any of these bonding methods in lieu of a surety bond or self-bond instrument. Wyoming proposes to expand the definition of “bond” to allow the Administrator to accept alternative financial assurances which provide comparable levels of assurance for reclamation performance, and require OSM approval of the alternative assurances. As proposed, the definition of “bond” at Chapter 1, Section 2(k) would read as follows:

(k) “Bond” means a surety or self-bond instrument by which the permit applicant assures faithful performance of all requirements of the Act, all rules and regulations promulgated thereunder, and the provisions of the permit and license to mine. The term shall also include the following, which the operator has deposited with the Department of Environmental Quality in lieu of a Surety Bond or Self-Bond Instrument:

- (i) Federal insured certificates of deposit;
- (ii) Cash;
- (iii) Government securities;
- (iv) Irrevocable letters of credit;
- (v) An alternative method of financial assurance that is acceptable to the Administrator and provides for a comparable level of assurance for performance of reclamation obligations. The alternative method of financial assurance must first be approved by the Office of Surface Mining; or
- (vi) A combination of any of these bonding methods.

In its “Statement of Reasons,” the LQD notes that the proposed rule allows

for some flexibility in evaluating alternative financial assurances but still requires OSM approval before the instruments may be accepted. OSM evaluates alternative bonding systems to assure that the regulatory authority will have sufficient money available to complete the reclamation plan for any areas which may be in default at any time, and provide a substantial economic incentive for the operator to comply with all reclamation provisions.

The Federal regulations at 30 CFR 800.12 provide that the regulatory authority may allow for—

- (a) A surety bond;
- (b) A collateral bond;
- (c) A self-bond; or
- (d) A combination of any of these bonding methods.

The preamble to 30 CFR 800.12 states that the rule lists the three types of bonds mentioned because those are three types authorized under section 509 of SMCRA. See the July 19, 1983 **Federal Register** (48 FR 32940). However, section 509(c) also provides that the Secretary may approve, as part of a State or Federal program, an alternative system that will meet the objectives and purposes of the bonding program under section 509. An alternative bonding system must meet the requirements of section 509(c) of the Act, as implemented by 30 CFR 800.11(e), in order to be approved by the Secretary. See the August 10, 1983 **Federal Register** (48 FR 36418).

The Federal regulations at 30 CFR 800.11(e) establish the criteria for approval of an alternative bonding system. Specifically, an alternative bonding system must assure (1) that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and (2) that the alternative will provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

Wyoming's proposed rule change is too general to meet those standards for approval. Wyoming does not identify a specific alternative bonding system in its proposed rule. Rather, it allows a permit applicant to submit an undefined alternative method of financial assurance that has not yet been approved by the Office of Surface Mining as part of the Wyoming program to the LQD Administrator for acceptance. Consistent with the state program amendment process outlined at 30 CFR 732.17, an alternative method of financial assurance (*i.e.*, an alternate bonding system) must be approved by OSM as part of a state program before it can be implemented. For example, if

and when Wyoming submits a specific alternative method of financial assurance (*i.e.*, an alternate bonding system) to us, we will review that submittal as a proposed state program amendment to ensure that it meets the criteria in 30 CFR 800.11(e). If we ultimately approve Wyoming's submission as part of its program, only then will the Administrator have the authority to accept and implement the alternative method of financial assurance when it is submitted by an applicant. In this respect, nothing is gained by the current Wyoming proposal. For the reasons discussed above, we are deferring our decision on Wyoming's proposed rule change as it is not ripe for making a determination at this time.

## 2. Chapter 11, Section 2(a)(vii)(A), Rating Organizations

At its own initiative, Wyoming proposes to revise its rules at Chapter 11, Section 2(a)(vii) which specifies informational requirements for self-bond applications. Among other things, an operator self-bonding applicant must submit information establishing that it meets one of three criteria related to financial strength in its application. This proposed rule change would modify the alternate financial criterion dealing with ratings by certain statistical ratings organizations.

The current Wyoming regulations provide that, as one of the three alternate showings required under Section 2(a)(vii), an operator must show that it has a rating for all bond issuance actions over the past five years of "A" or higher as issued by either Moody's Investor Service (Moody's) or Standard and Poor's Corporation (Standard and Poor's). Wyoming proposes to amend paragraph (A) to allow operators to use any "nationally-recognized statistical rating organization" (NRSRO) as approved by the Securities and Exchange Commission (SEC), if acceptable to the regulatory authority, to establish its rating for all bond issuance actions over the past five years. If an SEC-approved NRSRO acceptable to the regulatory authority uses a rating system different from Moody's and Standard and Poor's, the operator must show that its rating by the NRSRO is equivalent to a rating of "A" or higher by either Moody's or Standard and Poor's.

In its "Statement of Reasons," the LQD notes that the proposed rule change incorporates the provision that any alternate firm must be acceptable to the regulatory authority to qualify, which allows for case-by-case evaluations. Further, the alternative organization's rating designation must

be evaluated against Moody's or Standard and Poor's designations to ensure consistency and, since various rating organizations with strong credentials are available, the options for rating should not be limited to only two firms.

The counterpart Federal self-bonding regulations at 30 CFR 800.23(b)(3) also specify informational requirements for self-bond applications and require that applicants submit information establishing that they meet one of three criteria related to financial strength in their application. The Federal financial criterion in subparagraph (i), dealing with ratings by certain statistical ratings organizations, requires that an applicant for a self-bond (or its parent corporation guarantor or other corporate guarantor) have "a current rating for its most recent bond issuance of 'A' or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation."

The rationale for that regulation is set forth in the preamble at 48 FR 36422 (August 10, 1983):

A rating by Standard and Poor's or Moody's of "A" or higher under Section 800.23(b)(3)(i) and a tangible net worth of at least four times the bond amount under Section 800.23(d) together will assure a low risk of company bankruptcy for those companies choosing to qualify under Section 800.23(b)(3)(i), rather than under Section 800.23(b)(3)(ii) or (iii). In order to rate the bond issuance of a company, these ratings services do thorough studies of the financial records of the issuing firms to determine ability to repay the bonds. The services are relied upon heavily by creditors and maintain a high rate of predictive success.

On September 29, 2006, the President signed the Credit Rating Agency Reform Act of 2006 into law (Pub. L. 109-291, 16 Stat. 1327). The law was enacted to, among other things, "improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry." *Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 3850, Credit Rating Agency Reform Act of 2006, S. Report No. 109-326, 109th Cong. 2d Sess. (Sept. 6, 2006), p. 1.* On June 18, 2007 (72 FR 33564), the SEC adopted final regulations implementing the new law.

On June 28, 2007, the SEC announced that seven (7) credit rating agencies previously identified as NRSRO's (Moody's Investors Service; Standard & Poor's Rating Services; Fitch, Inc.; A.M. Best Co., Inc.; DBRS (Dominion Bond Rating Service Limited); Japan Credit Rating Agency, Ltd.; and Rating and Investment Information, Inc.) could

continue to represent themselves or act as NRSROs while the SEC processed their registration applications. *SEC Allows Existing Credit Rating Agencies to Act as NRSROs*, Dechert on Point (July 2007).

Moody's and Standard and Poor's have over 80% of the credit rating industry market share as measured by revenues according to the *Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 3850, Credit Rating Agency Reform Act of 2006*, S. Report No. 109-326, 109th Cong. 2d Sess. (Sept. 6, 2006). One of the purposes of the Credit Rating Agency Reform Act of 2006 was to open up the credit rating industry to competition. Wyoming's proposed amendment allows an operator to use bond ratings from an NRSRO only if it is both approved by the SEC and acceptable to the regulatory authority, and thereby ensures that only ratings by reliable NRSRO's are used as a measure of a company's financial strength. We find that Wyoming's proposed rule change is consistent with the Credit Rating Agency Reform Act of 2006 and its implementing regulations and that its adoption will not make Wyoming's rules less effective than the corresponding Federal regulations at 30 CFR 800.23(b)(3)(i) and (c). We approve Wyoming's proposed rule change.

### 3. Chapter 11, Section 2(a)(xii)(A) & (B), Tangible Net Worth Limits

At its own initiative, Wyoming proposes to revise its rules at Chapter 11, Section 2(a)(xii)(A) and (B). Wyoming's existing language at Chapter 11, Section 2(a)(xii)(A) and (B) is substantively identical to Federal counterpart provisions at 30 CFR 800.23(d). Chapter 11, Section 2(a)(xii)(A) and (B) set forth certain restrictions on the regulatory authority's authority to accept self-bonds from operators and parent guarantors as follows:

(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 parent 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. \* \* \*

Wyoming proposed to amend these provisions so as to provide operators and parent guarantors greater self-bonding capability if the operator or parent guarantor meets more stringent

financial standards. Wyoming proposed to amend its regulations at Chapter 11, Section 2(a) (xii) (A) and (B) by adding language as follows:

(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, however the Administrator may allow for an increase in the self-bond amount to 35 percent of tangible net worth for operators that have a ratio of total liabilities to net worth of 1.5 or less and a ratio of current assets to current liabilities of 1.7 or greater, or

(B) For the Administrator to accept a parent 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, however the Administrator may allow for an increase in the self-bond amount to 30 percent of tangible net worth for operators that have a ratio of total liabilities to net worth of 1.5 or less and a ratio of current assets to current liabilities of 1.7 or greater, or

Thus, under Wyoming's proposed amendment, operators and parent guarantors would be allowed to self-bond up to 35% and 30%, respectively, of their tangible net worth if they have both a ratio of total liabilities to net worth of 1.5 or less and a ratio of current assets to current liabilities of 1.7 or greater. The proposed ratios are intended to represent an increase in financial stability over the current ratios.

To approve Wyoming's proposal, OSM must base its decision on the information contained in the State submission of the amendment. The record needs to contain sufficient information and data to support the conclusion that the State's proposal is as effective in meeting the requirements of the Act as are the Federal regulations. OSM can assist the States with compilation of information and data, but it remains the responsibility of the State seeking approval of an alternative to establish the necessary record.

In its "Statement of Reasons," the LQD indicates that the proposed rule changes would strengthen the existing regulatory framework and permit a company that can demonstrate greater financial strength than is required by the existing rules to be granted additional self-bonding capacity. In order to measure the additional financial strength of a company with the proposed alternative credit ratios, the LQD relies on recent studies completed by Standard and Poor's and Moody's that analyzed credit ratios and credit default probabilities by rating

categories. The LQD maintains the studies indicate that tightening the Liability to Net Worth Ratio (ratio of liabilities to net worth) from 2.5 to 1.5 is equivalent to a company moving from a non-investment grade rating to an investment grade rating, and that the probability of a credit default is reduced by more than half. Although the studies do not address the additional liquidity demonstrated by a Current Ratio (ratio of current assets to current liabilities) of 1.7 or better, the LQD states that the proposed current ratio would add to a company's financial ability to honor its immediate commitments. The LQD used the rating organization studies to compare default rates for companies with the existing and proposed Liabilities to Net Worth ratios. The LQD states that the stronger ratios provide more than enough protection to assure that the State is taking no more risk than it would under the existing rules, and that the approximate 40% strengthening of the financial ratios (from 2.5 to 1.5 for the Liability to Net Worth Ratio and 1.2 to 1.7 for the Current Ratio) should allow for at least a 40% increase in self-bonding capacity (25% to 30% or 35% of Net Worth).

In letters dated March 24 and July 1, 2008, Wyoming responded to OSM's requests by providing additional analysis and including specific references to the Standard and Poor's and Moody's studies as the basis for some of the statements in the "Statement of Reasons."

Wyoming states that a 40% reduction in the ratio of liabilities to net worth equates to a 40% increase in financial strength. Under the proposal Wyoming states this justifies a 40% increase in self bond measured against net worth.

The Federal self-bonding rules establish minimum criteria for allowing an applicant for a surface coal mining and reclamation operation permit to self-bond.

States are not required to adopt self-bond rules, but if States choose to allow self-bonding, these rules establish minimum criteria. States choosing to allow self-bonding may adopt more detailed rules that reflect the financial structures of the local industry, if necessary to provide the regulatory authority additional protection from risk of forfeiture. \* \* \* The self-bonding rules in this rulemaking form the benchmark by which the States can build their own programs if they wish to allow self-bonding of surface coal mining operations. If they choose to allow self-bonding, States can add their own additional relevant criteria.

See the August 10, 1983 **Federal Register** (48 FR 36418).

The Federal regulation at 30 CFR 800.23(d) prohibits the regulatory

authority from accepting operator self-bonds or parent corporate guarantees for self-bonds unless the total amount of the operator's or parent corporate guarantor's outstanding and proposed self-bonds and self-bond guarantees for surface coal mining and reclamation operations does not exceed 25 percent of the applicant's tangible net worth in the United States. Similarly, where a non-parent corporation proposes to guarantee an operator's self-bond, 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.

In establishing the self-bonding rules OSM reasoned that—

Although the requirements of these rules are such that only well-established, financially solvent business entities will qualify for self-bonding, there is always an element of risk involved in underwriting the obligations of such companies. The 25 percent restriction provides a financial cushion, in the event that a self-bonded entity should fail, to allow the regulatory authority to attempt to recoup self-bonded amounts from assets of the bankrupt entity.

See the August 10, 1983 **Federal Register** (48 FR 36425).

Wyoming's proposal combines and links two distinct self-bonding requirements: Financial strength defined by eligibility criteria and limits on allowable self-bond amounts relative to a company's tangible net worth. Wyoming attempts to directly equate an increase in financial strength (eligibility requirements) to an increase in financial risk (self-bond limits). As noted above, Wyoming states that the approximate 40% strengthening of the eligibility financial ratios (from 2.5 to 1.5 for the Liability to Net Worth Ratio and 1.2 to 1.7 for the Current Ratio) should allow for at least a 40% increase in self-bonding capacity (25% to 30% or 35% of Net Worth).

Preamble language cited above makes clear that the Federal limit for self-bonds relative to a company's tangible net worth in the United States provides a financial cushion, in the event that a self-bonded entity should fail, to allow the regulatory authority to attempt to recoup self-bonded amounts from assets of the bankrupt entity. The limits of self-bonding amounts relative to a company's tangible net worth and financial strength defined by eligibility requirements are independent requirements under OSM's regulations. The Federal eligibility requirements at 30 CFR 800.23(b) are believed to ensure adequate financial stability. We agree that companies meeting more stringent financial standards should be less likely

to go bankrupt. We do not agree with Wyoming's rationale to directly equate the percentage increase in financial strength required for eligibility to the percentage increase in allowable self-bond. There is insufficient basis to conclude that a 40% change in the ratio that represents financial strength means a 40% change in financial strength. Furthermore, the record does not support a conclusion that a one-to-one correlation exists between an increase in financial strength ratios for eligibility and an increase to self-bond limits.

Therefore, we cannot find the proposal to increase allowable self-bond to be no less effective than the Federal regulations and we disapprove it.

#### *B. Revisions to Wyoming's Rules With No Corresponding Federal Statute or Regulation*

1. Chapter 11, Section 2(a)(xii)(D) & (E), Acceptance of Foreign Corporate Guarantees and Informational Requirements for Self-Bond Operator and Guarantor Applicants That Include Foreign Assets in Tangible Net Worth Calculations.

At its own initiative, Wyoming proposes to add provisions allowing the Administrator to accept self-bond guarantees from foreign companies and describing informational requirements for self-bond operator and guarantor applicants that include assets outside the United States in their tangible net worth determinations. In its "Statement of Reasons," the LQD notes that the proposed rules provide additional protection to the State if the parent or non-parent guarantor is a foreign company, and allow those companies to rely upon their non-domestic assets in measuring net worth.

Under Wyoming's proposal, in order to use foreign assets in its tangible net worth determination, the company must provide a legal opinion concerning the collectability of the self-bond in a foreign country and a separate bond to be used in the event the self-bond must be collected. The legal opinion and the requirement for a separate bond to cover the cost of collecting a self-bond for a foreign guarantee is deemed necessary because of the different legal systems that may have to be used to collect the bond. It also may be necessary to employ a foreign legal corporation to pursue the collection in foreign courts. The LQD further states that the Wyoming Attorney General's Office will review the opinion from the international law firm. The State is able to monitor the status and valuation of the assets used to support the self-bond because the operator is required to submit an audited financial statement

that includes such information as set forth in Chapter 11, Section 4. In addition, the audited financial statement must be in accordance with generally accepted accounting principles adopted by the United States Financial Accounting Standards Board. Chapter 11, Section 4 also provides the LQD with the authority to require quarterly reporting if it determines that the financial condition of the company warrants closer scrutiny. Lastly, Chapter 11, Section 5(a) allows the Administrator to require the operator to replace the self-bond if for any reason the Administrator determines that the self-bond does not provide the protection required by the Wyoming Department of Environmental Quality Act. The rule allows the operator 90 days to replace the self-bond.

Our evaluation of Wyoming's proposal to allow tangible net worth determinations to include assets in foreign countries focused on whether the proposal is consistent with the Federal requirement at 30 CFR 800.23(d) that an applicant's tangible net worth be "in the United States." In adopting the Federal self-bonding regulations, OSM clarified in the August 10, 1983 preamble for 30 CFR 800.23(d) that "all self-bonds of the applicant for surface coal mining and reclamation operations shall be considered and that, to facilitate recovery of self-bonded amounts in the event of bankruptcy, net worth must be net worth in the United States." See 48 FR 36422, 36425. Our evaluation focused on the risks associated with the ability to recover foreign self-bonded amounts in the event of bankruptcy.

We notified Wyoming of our concerns with their proposal by letter dated May 26, 2006 (Administrative Record No. WY-40-08). Among other things, we recommended that Wyoming revise its proposed rule language in (I) to require that a legal opinion assure that the bond is in fact collectable and explain how it is to be collected.

Wyoming responded by letter dated June 23, 2006 (Administrative Record No. WY-40-09) and submitted additional explanatory information about its self-bonding rules with respect to the inclusion of foreign assets as part of a company's tangible net worth and the eligibility of foreign companies to self-bond or guarantee a self-bond.

Wyoming stated that Sections 2(a)(xii)(D) and (E) are a subset of a larger set of financial information required as part of the self-bond application process, and that the Administrator's approval is conditioned on the applicant's submission of additional financial data set forth in Sections 2(a)(xii)(A)-(E). Wyoming also

maintained that the requirement in Section 2(a)(xii)(E)(I) that the legal opinion be “from a firm recognized to do business in the country of the firm’s international headquarters concerning the collectability of a self-bond in the foreign country,” serves to verify that the self-bond can in fact be collected and will also explain how it is to be collected.

Wyoming went on to state that, in order to form an opinion on either of these issues, one must first conclude that the bond is collectable and that an explanation of the methods used to collect the bond would be implicit in any legal opinion estimating the cost of recovering the self-bond. Wyoming stated that the legal opinion is a tool that allows the Administrator to make an informed decision on whether to accept or reject the self-bond and indicated that the Administrator would be likely to reject a self-bond application if the legal opinion stated that it would be difficult and costly to collect the self-bond. Wyoming explained that, in that event, the Administrator could require additional financial assurances to limit the risk of collecting the bond amount or recovering foreign assets.

As a result, Wyoming asserted, the rules as submitted already require that the legal opinion discuss whether a self-bond is in fact collectable, as well as the methods of collection. Next, Wyoming explained that the availability of methods for collecting assets of non-parent foreign guarantors will be discussed as part of the legal opinion required by Section 2(a)(xii)(E)(I). After the legal opinion and all other relevant materials are reviewed, the Administrator can make an informed decision whether to accept or reject a self-bond application. Wyoming also stated that, because of the flexibility built into the self-bond regulatory framework, the Administrator may request additional guarantees that the self-bond or foreign assets are in fact collectable.

Insofar as collecting assets of non-parent foreign guarantors who may not have any assets in the U.S., Wyoming states that this situation will be avoided because financial data is required of all guarantors and Section 3(b)(ii) requires non-parent guarantors to submit an indemnity agreement along with an affidavit that certifies that such an agreement is valid under all applicable Federal and State laws. Lastly, Wyoming refers to Section 2(a)(xii)(C) which requires that “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 non-parent corporate guarantor’s tangible net worth in the United States.”

For several reasons, we find that Wyoming’s proposal does not satisfactorily address concerns relating to the inherent risks associated with collecting non-domestic assets and recovering self-bonded amounts in the event of bankruptcy of a company without assets in the United States sufficient to cover reclamation costs. A sample legal opinion supplied by industry in support of Wyoming’s proposal demonstrates that, in the event of an operator or parent guarantor bankruptcy, the collection of non-domestic assets could be prohibitively difficult and costly. The opinion’s identification of an extremely broad range of potential bond recovery costs, based upon numerous assumptions and subject to many qualifications, resulted in the opinion not providing any solid assurance of recoverability of foreign assets.

Proposed subsection (E)(I) does not expressly require that the legal opinion confirm that the bond would be collectable, nor does it require a detailed explanation of the requirements and procedures to file and enforce a self-bond guarantee based on foreign assets. There is no requirement that the legal opinion verify the foreign company’s and/or its signatory’s authorities to guarantee reclamation obligations or indemnify United States governmental entities. Nor is the legal opinion required to explain applicable principles of corporate and bankruptcy law in the relevant country and its likely effects on the recoverability of reclamation bonds and guarantees. It is unclear how the requirement that the legal opinion be from “a firm recognized to do business in the country of the firm’s international headquarters” provides any additional assurance of recoverability of foreign assets which could potentially be located anywhere in the world.

Many Wyoming mines include Federal land and the United States must be named as a beneficiary, co-payee, co-obligee, etc., on bonds for such mines. It is therefore likely that OSM would incur substantial costs in the event of a forfeiture of a self-bond of a company lacking assets in the United States sufficient to cover reclamation costs. OSM finds that the Wyoming proposal does not provide sufficient assurance of performance of reclamation responsibilities for Federal lands and is inconsistent with the Federal regulations at 30 CFR 800.23(d).

Wyoming referred OSM to the Administrator’s discretion to deny

applications for self-bond guarantees from foreign corporations. Wyoming notes that if an application to self-bond is rejected on the basis of the legal opinion, the Administrator can request additional financial assurances which limit the risk of collecting the bond amount or recovering foreign assets. Chapter 11, Section 3(a)(i) provides that the Administrator’s decisions to approve or reject a self-bond application must meet the demonstrations required by W.S. 35–11–417(d). The referenced statutory provision allows the Administrator to accept the bond of the operator without separate surety when the operator “demonstrates to the satisfaction of the director the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond this amount.” Based on this general language, we remain unclear as to the specific circumstances under which the Administrator may exercise his or her discretion to reject a self-bond application. Similarly, we do not fully understand what Wyoming means when it refers to requesting “additional financial assurances” from foreign corporations in the event that a self-bonding application is rejected by the Administrator.

Moreover, according to Wyoming’s June 23, 2006 response letter, self-bond guarantees by non-parent foreign corporations are subject to the limitations of subsection (C) of Section 2(a)(xii). That subsection currently restricts self-bonds to 25% of the non-parent corporate guarantor’s tangible net worth “in the United States.” While retaining the applicability of that subsection to non-parent foreign corporations would not cause the State program to be less effective than the Federal rules, applying that provision would appear to effectively negate Wyoming’s purpose in elsewhere proposing to amend its rules to allow the use of a non-parent guarantor’s foreign assets in computing tangible net worth.

We also note that the meaning and applicability of proposed Chapter 11, Section 2(a)(xii)(D) are unclear. Subsection (D) states that “If the operator chooses to include assets outside the United States in their tangible net worth, the Administrator shall require the information required under subsection (E).” (Emphasis added). Given that subsection (E) identifies information required of a foreign corporate guarantor, not the operator, the requirements of subsection (D) are unclear.

Based on the discussion above, we find that Wyoming's proposed regulations at Chapter 11, Section 2(a)(xii)(D) and (E) are less effective than the Federal regulations at 30 CFR 800.23(d) the Secretary's regulations in meeting the requirements of SMCRA. The uncertainties and risks associated with cost recovery and enforcement of self-bonds of companies without sufficient assets in the United States to cover costs of reclamation are too great for us to approve their use in the absence of a Federal rule change. Accordingly, we are not approving Wyoming's newly-created rules at Chapter 11, Section 2(a)(xii)(D) and (E), concerning foreign corporation guarantors.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record Nos. WY-40-3 and WY-40-10). Four comments were received; three from industry groups and one from a Federal Agency, all in support of Wyoming's proposed rule changes.

##### *Industry Group Comments*

On April 21, 2006, the Wyoming Mining Association (WMA) commented on the proposed amendment (Administrative Record No. WY-40-4). The WMA provided comments in response to concerns that OSM had previously raised in connection with Wyoming's proposed rule changes on self-bonding. Specifically, with respect to raising the tangible net worth limits, the WMA provided an analysis in support of the increase and commented that the proposed rule change addresses the severe shortage of surety bonds and the "one size fits all" 25 percent limit by allowing more of the exposure to be shifted to Wyoming without increasing the risk undertaken by the State. The WMA further noted that, by providing the higher bonding amount, Wyoming is creating an incentive for companies to strengthen their balance sheets. Regarding the issue of monitoring the status and valuation of foreign company assets as the base for self-bonds, the WMA commented that the current policy for foreign parent guarantors would apply to foreign company assets used directly for self-bonds. Specifically, as a stipulation to approved use of foreign assets for self-bonding purposes, Wyoming requires interim reporting on the continued qualification for self-bonding based on the extent of financial strength and bonding levels. The WMA goes on to

state that the reporting information includes data regarding the status and categorization of foreign assets. With respect to the reporting requirements and standards that would apply to foreign companies, the WMA noted that Wyoming's rules already provide the Administrator with the authority to require frequent status reporting if the financial condition of the [foreign] company warrants closer scrutiny, and that reporting standards and requirements are case-dependent, corresponding to the demonstrated financial strength of a company. The WMA further commented that the valuation of foreign assets will be determined through audited financial statements which shall be in English and shall be prepared with generally accepted accounting principles, as adopted by the United States Financial Accounting Standards Board. Those methods will provide the valuation of assets equivalent to evaluation of U.S. based assets. The WMA responded to OSM's concerns related to monitoring or requiring reports of legal changes affecting the status and liquidity of foreign assets by stating that Wyoming will require interim status reporting on the continued qualification for self-bonding, which will include information regarding the status and form of foreign assets. In response to OSM's concerns related to conducting an independent legal review prior to acceptance of a foreign parent or non-parent guarantee to verify that the legal opinion provided by the international firm concerning the enforceability of an indemnity agreement is accurate, the WMA commented that Wyoming utilizes the services of the State Attorney General's Office to review the legal opinion, which serves as a second independent legal review. The WMA stated that Wyoming's current regulations at Chapter 11, Section 5(a), allowing for the substitution of an alternate bond within 90 days if an operator no longer qualifies under the self-bonding program, provides a time frame within which a company must replace self-bonds. Lastly, the WMA stated that Wyoming's current policy that conditions approval of self-bonding using foreign assets on interim status reporting of those assets provides a mechanism for identifying the potential for such assets being nationalized or becoming illiquid as a result of a legal change in the country where they are located. The WMA urged OSM to approve the changes as consistent with and no less effective than SMCRA and the Federal regulations.

The National Mining Association (NMA) commented in a May 17, 2006, e-mail (Administrative Record No. WY-40-6). The NMA stated that it adopts the April 21, 2006, comments filed by the Wyoming Mining Association. The NMA further noted that it also believes it is important for OSM to consider that, due to factors unrelated to any loss experience for reclamation bonds, surety capacity for reclamation obligations has diminished substantially as compared to five or six years ago. As a result, the NMA asserted that carefully crafted revisions to State programs which make alternatives to surety more readily available are both a necessary and responsible response to this fundamental change in the surety market. Lastly, the NMA commented that Wyoming coal mines are owned and operated by well-capitalized companies which take their stewardship responsibilities seriously, and that the revisions to the Wyoming State program ensure that the objectives of the performance bonding requirements in Section 509 of SMCRA will be met. The NMA also urged OSM to approve the revisions as being no less effective than SMCRA and its implementing rules.

On August 14, 2006, Rio Tinto Energy America (RTEA) provided comments in support of Wyoming's June 23, 2006, response to our May 26, 2006, issue letter on the proposed amendment (Administrative Record No. WY-40-11). RTEA owns and operates three mining operations in the Powder River Basin in Wyoming. RTEA commented that Wyoming's June 23, 2006, letter notes that the proposed rule holds additional qualifying requirements when foreign assets are utilized for self bond guarantees. RTEA further commented that the additional requirements, which provide a strong base to assess risk acceptability for foreign assets, include: A legal opinion providing detailed information on the self-bond collectability; a legal opinion on projected costs to collect upon a self-bond in the foreign venue; a separate surety bond to address the projected costs to collect upon the self-bond; additional demonstrations of financial strength; and any other information determined necessary by the Administrator for evaluation. RTEA also noted that the required legal opinions are to be reviewed by both the Wyoming Attorney General's Office and the Administrator. RTEA goes on to state that these measures are more stringent and require greater information and demonstrations than do those applying to domestic company self-bonds or guarantees to self-bond. Next, RTEA

commented that the final determination to accept or deny such applications remains at the discretion of the Administrator, providing measures for additional assurances of financial strength and low risk if necessary. Lastly, RTEA stated its agreement with Wyoming's determinations that the amendment, as submitted, contains the flexibility to require any necessary assurances from the applicant in order to ensure that the State is not taking an undue risk when accepting a self-bond or guarantee. RTEA commented that Wyoming's explanation provides a strong basis for OSM to approve the proposed amendment, and it urged OSM to approve the proposed amendment without further revision.

With respect to Wyoming's proposal to raise the tangible net worth limits and provide operators and parent guarantors greater self-bonding capability if they meet the more stringent ratios of total liabilities to net worth and current assets to current liabilities, we refer the commenters to Finding No. III.A.3. for a detailed explanation as to why the proposed revisions to Chapter 11, Section 2(a)(xii)(A) & (B) are not being approved.

In response to comments regarding Wyoming's proposal concerning acceptance of foreign corporate guarantees and informational requirements for self-bond operator and guarantor applicants that include foreign assets in tangible net worth calculations, we refer the commenters to Finding III.B.1. for a detailed explanation as to why we are not approving Wyoming's newly-created rules at Chapter 11, Section 2(a)(xii)(D) and (E), respectively.

#### *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-40-3). We received comments from one Federal Agency.

The Bureau of Land Management (BLM) commented in an April 28, 2006, e-mail (Administrative Record No. WY-40-5). The BLM stated that the revised Wyoming proposal addresses its programs, and it agrees with the changes.

#### *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 pertains 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 March 24, 2006, we requested comments on Wyoming's amendment (Administrative Record No. WY-40-3), but neither responded to our request.

#### **V. OSM's Decision**

Based on the above findings, we approve, with the following exceptions, Wyoming's March 7, 2006 amendment.

As discussed in Finding No. III.A.1, we are deferring our decision on Wyoming's proposed rule change at Chapter 1, Section 2(k) that expands the definition of "bond" to allow for acceptance of alternative financial assurances which provide comparable levels of assurance for reclamation performance, and also requires OSM approval of those assurances.

We do not approve the following provisions.

As discussed in Finding No. III.A.3, we are not approving Wyoming's proposed rule changes at Chapter 11, Section 2(a)(xii)(A) and (B), respectively, concerning acceptance of a larger percentage of self-bonds relative to tangible net worth for operators and parent corporate guarantors above those currently permitted by the Federal rules.

As discussed in Finding No. III.B.1, we are not approving Wyoming's newly-created rules at Chapter 11, Section 2(a)(xii)(D) and (E), concerning acceptance of foreign corporate guarantees and informational requirements for self-bond operator and guarantor applicants that include foreign assets in tangible net worth calculations.

We approve the rules as proposed by Wyoming with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

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 State's program demonstrates that the State 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 State 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 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 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 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

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

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

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

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

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:  
 a. Does not have an annual effect on the economy of \$100 million.  
 b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or

local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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

*Unfunded Mandates*

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

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2009.

**Allen D. Klein,**  
 Director, Western Region.

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

**PART 950—WYOMING**

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

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

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

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

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
March 7, 2006	October 14, 2009	Chapter 11, Section 2(a)(vii)(A).