abuse tests on such covers, is considered inaccessible to a child, unless the product or part of the product, in one dimension, is smaller than 5 centimeters. However, vinyl (or other plasticized material) covered mattresses/sleep surfaces that contain phthalates that are designed or intended by the manufacturer to facilitate sleep of children age 3 and younger, are considered accessible and would not be considered inaccessible through the use of fabric coverings, including sheets and mattress pads.

(j) The intentional disassembly or destruction of products by children older than age 8 years, by means or knowledge not generally available to younger children, including use of tools, will not be considered in evaluating products for accessibility of phthalate-containing components.

Dated: February 11, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–03400 Filed 2–13–13; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–032–FOR; Docket ID No. OSM–2011–0011]

Montana Regulatory Program

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

ACTION: Final rule.

SUMMARY: We are issuing a final decision on an amendment to the Montana regulatory program (the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We are not approving the amendment. Montana proposes changes to the Montana Strip and Underground Mine Reclamation Act (MSUMRA) that differentiate between coal beneficiation and coal preparation plants. Montana revised its program to clarify ambiguities and improve operational efficiency.

DATES: *Effective Date:* February 14, 2013.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Casper Field Office Director, Telephone: (307) 261–6550, Internet address: *jfleischman@OSMRE.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana 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 Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated June 7, 2011, Montana sent us a proposed amendment to its program (SATS number: MT–032–FOR, Administrative Record Docket ID No. OSM–2011–0011) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the amendment to include changes made to the MSUMRA as a result of the Montana Legislature's 2011 passage of a Senate Bill (SB 297) relating to coal beneficiation. Montana sent the amendment to include changes made at its own initiative.

We announced receipt of the proposed amendment in the October 17, 2011, **Federal Register** (76 FR 64045). 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. MT–29–11; Administrative Record Document ID No. OSM–2011–0011–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 16, 2011. We received four public comments and four Federal agency comments (discussed under ''IV. Summary and Disposition of Comments'').

During our review of Montana's submittal and the comments received, we identified concerns with the amendment proposal including its newly proposed statutory definition of ''Coal beneficiation plant'' at Montana Code Annotated (MCA) Section 82–4–203(9), as well as proposed revisions to its currently approved statutory definitions of ''Coal preparation plant'' at MCA Section 82–4–203(11); ''Operation'' at MCA Section 82–4–203(34); ''Operator'' at MCA Section 82–4–203(35); ''Strip mining'' at MCA Section 82–4–203(48) (b); and ''Underground mining'' at MCA Section 82–4–203(52). We notified Montana of these concerns by letter dated February 14, 2012 (Administrative Record No. MT–29–15; Administrative Record Document ID No. OSM–2011–0011–0011).

We delayed final rulemaking to afford Montana the opportunity to submit new material to address the deficiencies. Montana responded in a letter dated March 14, 2012, that all of the proposed changes are legislative amendments to the MSUMRA and because they are changes in statute and not rule, the Montana Department of Environmental Quality (DEQ) has no authority to amend them (Administrative Record No. MT–29–16; Administrative Record Document ID No. OSM–2011–0011–0012). As a result, Montana stated that it will not be submitting revised amendments or draft proposed changes in response to our February 14, 2012, letter. Therefore, we are proceeding with the final rule **Federal Register** document.

III. OSMRE's Findings

30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR Part 700. In 30 CFR 730.5, OSMRE defines ''consistent with'' and ''in accordance with'' to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

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 not approving the amendment as described below.

A. Minor Revisions to Montana's Statutes

Montana proposes minor wording and editorial changes to its currently approved statutory definitions of ''Coal conservation plan'' at MCA Section 82–4–203(9); ''Imminent danger to the health and safety of the public'' at MCA Section 82–4–203(25); ''Minable coal'' at MCA Section 82–4–203(32); ''Prospecting'' at MCA Section 82–4–203(41) (b); and ''Residential'' at MCA Section 82–4–203(46).

These minor wording and editorial changes do not impact the effectiveness of the current statutes and do not adversely affect other aspects of the program. OSMRE was prepared to approve them. However, in its March 14, 2012, letter Montana explained that as a matter of state law OSMRE must approve Chapter 408 as a whole before any portion of it can take effect [SB 297 was published as Chapter 408, Laws of 2011 by the Secretary of State].

Specifically, Montana referenced Section 2 of Chapter 408 which provides:

> [This act] is effective on the date that the office of surface mining reclamation and enforcement publishes notice in the **Federal Register** that [this act] is approved pursuant to 30 CFR 732.17.

Therefore, Montana advised that the minor grammatical changes will not become effective if OSMRE disapproves any amendments made by Chapter 408. During our review of Montana's submittal, we found that the proposed amendments to the definitions of ''coal preparation plant,'' ''operation,'' ''operator,'' ''strip mining,'' and ''underground mining'' are less effective than Federal regulations or less stringent than SMCRA.

Based on Montana's explanation above and the ''contingent voidness'' clause in Section 2 of Chapter 408, we are not approving the proposed minor wording and editorial changes.

B. Revisions to Montana's Statutes That Are Not the Same as the Corresponding Provisions of SMCRA and the Federal Regulations

1. Definition of ''Coal Beneficiation Plant'' at Montana Code Annotated (MCA) Section 82–4–203(9)

At its own initiative, Montana proposes a new definition for ''Coal beneficiation plant'' at Montana Code Annotated (MCA) Section 82–4–203(9) to mean ''a commercial facility where coal is subject to coal preparation that is not operated, owned, or controlled by the mine operator of the mine providing the coal.'' While there are no direct Federal counterpart provisions, the definitions of ''Surface coal mining operations'' at SMCRA Section 701(28)(A) and 30 CFR 700.5, and the definitions of ''Coal preparation'' and ''Coal preparation plant'' at 30 CFR 701.5 all speak to the activities of chemical or physical processing, cleaning, concentrating, or other processing or preparation of coal. Similarly, Montana's definitions of ''Coal preparation'' and ''Coal preparation plant'' include coal processing and preparation.

In its submittal, Montana expresses its intent to exclude coal beneficiation plants from permitting and regulation under the MSUMRA. Montana's proposed definition of ''Coal beneficiation plant'' does not sufficiently distinguish between coal preparation and coal beneficiation plants for purposes of regulation under SMCRA and the MSUMRA. Specifically, the proposed definition references ''a commercial facility where coal is subject to coal preparation.'' However, Montana's currently approved definition of ''Coal preparation plant'' at MCA Section 82–4–203(11) also references ''a commercial facility where coal is subject to coal preparation.'' Montana does propose to revise its definition of ''Coal preparation plant'' by specifying that coal preparation is ''in connection with a strip mine or underground coal mine.'' Nevertheless, Montana's definitions for ''Coal beneficiation plant'' and ''Coal preparation plant'' both reference a commercial facility where coal is subject to coal preparation and as such are largely synonymous.

In identifying the relationship necessary for coal preparation to be ''in connection with'' a coal mine, the principle stated by OSMRE in a May 5, 1983, **Federal Register** (48 FR 20393) preamble to the definition of ''surface coal mining operations'' should be referenced. In that preamble, OSMRE stated its belief that the phrase in Section 701(28)(A) of the Act and 30 CFR 700.5 ''in connection with'' should be interpreted broadly. OSMRE also cited examples of facilities that could be considered to be ''in connection with'' a coal mine, including ''facilities which receive a significant portion of their coal from a mine; facilities which receive a significant portion of the output from a mine; facilities which have an economic relationship with a mine; or any other type of integration that exists between a facility and a mine.'' Further, OSMRE stated that a ''facility need not be owned by a mine owner to be in connection with a mine.''

Therefore, ownership, control, or operation by someone other than the mine operator is not the only criterion that determines whether a coal beneficiation facility or coal preparation plant is ''in connection with'' a coal mine. OSMRE amended its regulations, as published in the **Federal Register** (November 22, 1988, 53 FR 47384), to clarify the circumstances under which coal preparation plants located outside the permit area of a mine are subject to the performance standards and permitting requirements of SMCRA. The associated preamble clarified that off-site coal preparation is subject to regulation under SMCRA only when it is conducted in connection with a coal mine. No definition of the term ''in connection with'' is included in the rule. OSMRE stated in the preamble that any attempt to further define this phrase would unduly restrict the discretion that the regulatory authority must have in order to make valid decisions about the applicability of SMCRA in individual cases. In the same preamble, OSMRE stated that the elements of (1) geographic proximity and (2) functional relationship are proper factors to consider in evaluating whether an off-site coal preparation plant is subject to regulation under SMCRA. As a result of a subsequent U.S. District Court decision, OSMRE published a notice in the **Federal Register** (January 8, 1993, 58 FR 3466) to clarify that geographic proximity may not be the decisive factor in deciding whether to regulate an off-site coal preparation plant. To allow proximity to be the decisive factor would render ''in connection with'' equivalent to ''at or near.'' That is not the Secretary's intent. Instead, the Secretary's intent is to provide regulatory authorities appropriate guidance and discretion in deciding which off-site coal processing plants to regulate.

Since the term ''in connection with'' is not defined in the rule, OSMRE clarified in the **Federal Register** (November 22, 1988, 53 FR 47384) several factors that should be considered in order to determine whether a coal preparation plant located outside the permit area of a mine is operated in connection with a coal mine, thus constituting a surface coal mining operation and subject to the performance standards and permitting requirements of SMCRA. Specifically, in addition to geographic proximity and functional relationship, other factors, including economic and operational relationship and point of ultimate use are to be considered by regulatory

authorities when evaluating whether such facilities are subject to regulation under SMCRA.

Accordingly, we find that Montana's proposed definition is too vague to exclude coal beneficiation plants from permitting and regulation under SMCRA and the MSUMRA. In particular, proposed MCA Section 82–4–203(9) references ''coal preparation'' and, in addition to relying solely on ownership and control considerations, fails to ensure that coal beneficiation plants have no functional or economic relationship to the mine(s) providing the coal and are the point of end use of the coal. Consequently, we are not approving Montana's proposed definition of ''Coal beneficiation plant'' as it is less stringent than SMCRA and less effective than the Federal regulations.

Moreover, we are not approving Montana's proposed statutory changes that derive from its disapproved definition of ''Coal beneficiation plant'' or their associated recodification. Specifically, we are not approving Montana's proposed revisions to its currently approved definition of ''Coal preparation plant'' at MCA Section 82–4–203(11); Montana's proposed revisions to its currently approved definition of ''Operation'' at MCA Section 82–4–203(34); Montana's proposed revision to its currently approved definition of ''Operator'' at MCA Section 82–4–203(35); Montana's proposed revisions to its currently approved definition of ''Strip mining'' at MCA Section 82–4–203(48)(b); and Montana's proposed revisions to its currently approved definition of ''Underground mining'' at MCA Section 82–4–203(52).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the original amendment proposal (76 FR 64045; Administrative Record Docket ID No. OSM–2011–0011–0001). We received four public comments.

Westmoreland Resources, Inc. commented in a July 6, 2011, email message that it supports the changes to MSUMRA resulting from passage and approval of SB 297, and encouraged OSM to approve the program amendment (Administrative Record Document ID No. OSM–2011–0011–0003).

We received a comment letter from a private citizen on November 15, 2011 (Administrative Record Document ID No. OSM–2011–0011–0010). The letter contained both general and narrative comments in opposition to SB 297. The commenter noted that the definition of a coal beneficiation plant relates only to the ownership of the ''commercial facility,'' and opined that apparently the authors of SB 297 and its proposed amendments to the Montana program thought that if a coal beneficiation plant is owned by someone other than the mine operator, it would have no effect on anything for which the mine owner/operator is responsible under MSUMRA and SMCRA.

The commenter also stated that Section 507(a) of SMCRA dealing with application requirements makes it quite plain that anyone having an interest in property being permitted must be listed whether ownership or lease, and Section 508 indicates that there must be a reclamation plan for those lands, and that would include every activity, including measures to be taken during mining and reclamation to assure the protection of surface and ground water systems, rights of present users to water, and several other things. As a result, the commenter expresses a concern that if a company can avoid reclaiming areas where some sort of ''beneficiation'' may have taken place and may now be polluted in the soil or water, it can dodge an expensive cleanup.

Next, the commenter asserted that SB 297 is trying to get coal gasification exempted from control if it is in a mine permit. The commenter stated that SMCRA is quite plain that damaging the hydrologic balance in a mine site is not acceptable. The commenter also referenced 30 CFR Part 828 which concerns special environmental protection performance, reclamation and design standards for in situ processing of coal and noted that water is particularly important in that part.

The commenter went on to claim that SB 297 could be a vehicle to allow most of a mine permit surface to be sold for a ''beneficiation'' plant that would result in the removal of all bonding and reclamation problems because the operator would cease to own most of it. The commenter continued that if one attempted to operate on a mine permit, there would be questions as to where the waste from the beneficiation plant would be stored or disposed of. The commenter then questioned how the effects of processed water on the hydrologic balance in the area would affect the mine operator's compliance with SMCRA, and asked what kind of chemicals would be used in the beneficiation process and where would they be stored or disposed of? The commenter concluded by asserting that SB 297 is an attempt to avoid complying with the reclamation laws, and the modifications to MSUMRA do not comply with SMCRA.

Notwithstanding the ancillary concerns expressed above regarding hydrologic balance and waste storage and disposal, we refer the commenter to Finding No. III.B.1. for a detailed explanation as to why we are not approving Montana's proposed amendment.

We also received a comment letter from the Montana Environmental Information Center (MEIC) on November 16, 2011 (Administrative Record Document ID No. OSM–2011–0011–0008). The MEIC opposed Montana's proposed changes to the MSUMRA and asserted that the myriad of proposed changes would violate Federal law by eliminating important regulation of coal beneficiation plants, strip mines, and underground mines. The MEIC further stated that the Montana proposal attempts to differentiate coal preparation plants by ownership and asserts that the definition of ''surface coal mining operations'' in section 701(28) of SMCRA does not allow for such arbitrary differentiation. The MEIC continued that because the definition does not differentiate operations based on ownership, the proposal is clearly in conflict with the Federal requirements and should be rejected.

Next, the MEIC asserted that Montana's proposed change to the definition of ''operation'' contains a broad exclusion of at least three different types of coal preparation facilities, railroads, roads, and equipment that would leave many communities with no regulation of these potentially dangerous activities. The MEIC then stated that the definition change clearly flies in the face of SMCRA and should be rejected.

Finally, the MEIC contended that Montana's attempt to exclude all beneficiation activities from regulation through proposed changes to the definitions of ''operator,'' ''strip mining,'' and ''underground mining'' is counter to the intent of SMCRA and the definition of ''surface coal mining operations.'' For the reasons stated above, the MEIC urged OSMRE to reject Montana's proposal.

In response to the concerns expressed above, we refer the MEIC to Finding No. III.B.1. for a detailed explanation as to why we are not approving Montana's proposed amendment.

Lastly, we received a comment letter from the Northern Plains Resource Council (NPRC) on November 16, 2011 (Administrative Record Document ID No. OSM–2011–0011–0009). The NPRC also opposed Montana's proposed changes to the MSUMRA and asserted

that they eliminate important oversight responsibilities of OSMRE in relation to coal preparation, strip mining, and underground mining and should be rejected as they clearly violate the intent of the Federal law. The NPRC continued that the proposed amendment's newly-created definition of ''coal beneficiation plant'' exempts these facilities from regulation under the MSUMRA and removes the Montana DEQ's jurisdictional authority to regulate them. The NRPC went on to state that the intent of SB 297 was to create a regulatory distinction between a coal preparation facility that is owned, operated, or controlled by the mine operator supplying the coal and a ''coal beneficiation plant'' that has a potential different owner, operator, or controller which results in an arbitrary exclusion under the law. The NPRC then referenced the definition of ''surface coal mining operations'' in section 701(28) of SMCRA and asserted that because it does not make a distinction between ownership, operation, or control of any such activities being connected to the mine operator, the distinction made in the Montana program would appear to be inconsistent.

Next, the NPRC commented that the proposed amendment attempts to change the definition of ''operation'' so that these facilities would no longer be subject to regulation under the Montana regulatory program, and would create a far reaching exemption under law that would leave significant gaps in oversight for the development and reclamation of such activities. The NRPC then reiterated that such facilities clearly fall under the definition of ''surface coal mining operations'' in SMCRA and asserted that allowing this exemption would be inconsistent with Federal law.

The NRPC then cited the Federal regulations at 30 CFR 785.21 to argue that all coal preparation facilities, whether within the mining permit area or not, are subject to regulation under SMCRA. Additionally, the NRPC maintained that the Federal regulations governing the development of *in situ* processing and gasification clearly indicate that these facilities are to be regulated under the provisions of SMCRA. The NRPC concluded by strongly encouraging OSMRE to reject the proposed amendment as it is in clear violation with SMCRA and the Federal regulations.

In response, we acknowledge the concerns expressed above and refer the NPRC to Finding No. III.B.1. for a detailed explanation as to why we are not approving Montana's proposed amendment.

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 Montana program (Administrative Record ID No. MT–29–03). We received comments from three Federal Agencies.

The Bureau of Land Management (BLM) commented in a July 8, 2011 letter (Administrative Record Document ID No. OSM–2011–0011–0005), the U.S Geological Survey (USGS) commented in a July 15, 2011 letter (Administrative Record Document ID No. OSM–2011–0011–0006), and the Mine Safety and Health Administration (MSHA) commented in a July 29, 2011 letter (Administrative Record Document ID No. OSM–2011–0011–0007).

The BLM commented that one of the proposed changes to the MSUMRA would differentiate a coal beneficiation plant from a coal preparation plant by way of ownership, control, or operations by someone other than the mine operator. The BLM continued that the effect of the change would be that the DEQ would no longer have regulatory authority through MSUMRA over facilities that meet the definition of ''coal beneficiation plant'' even though it performs the same processes as a coal preparation plant. The BLM then referenced the definition of ''Surface Coal Mining Operations'' at 30 CFR 700.5 and ''the cleaning, concentrating, or other processing or preparation of coal.'' The BLM also quoted § 701.11(a), which requires ''any person who conducts surface coal mining operations on non-Indian and non-Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program.'' On this basis, the BLM stated it appears that the operation of a coal beneficiation plant or coal preparation plant is to be regulated under SMCRA and the Federal regulations at 30 CFR Part 700. The BLM concluded by stating that the proposed change to the MSUMRA would render it less stringent than SMCRA and should not be allowed.

We agree with the BLM's concerns and refer it to Finding No. III.B.1. above for a detailed explanation as to why we are not approving Montana's proposed amendment.

The USGS commented that, as a non-regulatory agency, it does not have a standing position on the issue and could not provide one.

The MSHA stated its concurrence with the proposed revisions to the MSMURA and has no further comment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), OSMRE requested comments on the amendment from EPA (Administrative Record ID No. MT–29–03). EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 29, 2011, we requested comments on Wyoming's amendment (Administrative Record ID No. MT–29–03). The SHPO responded on July 5, 2011, and commented that apparently the DEQ previously exercised regulatory authority over coal beneficiation and coal preparation facilities prior to the proposed changes (Administrative Record Document ID No. OSM–2011–0011–0004). The SHPO also explained that OSMRE's correspondence does not address whether or not it otherwise has regulatory authority under SMCRA or the National Historic Preservation Act for what would be termed coal beneficiation under MSUMRA, and noted that the proposed changes would seem to constrict the actions or undertakings under which SMCRA would/should otherwise apply. The SHPO then stated that 36 CFR Part 800 does not distinguish regulatory authority or responsibility on the basis of ownership, but by permitting, approval, license, funding or indirect jurisdiction by a Federal agency. The SHPO also commented that if, but for the proposed changes, OSMRE has regulatory responsibility under SMCRA, then it would seem the proposed amendment would pertain to cultural resources insofar as a section 106 type review to 36 CFR Part 800 standards would be foregone. The SHPO concluded by stating that it is not in a position to determine that responsibility as § 800.3(a) states the Federal agency official shall determine whether an action is an undertaking using the criteria of § 800.16(y).

In response, we acknowledge the aforementioned concerns and refer the SHPO to Finding No. III.B.1. above for a detailed explanation as to why we are not approving Montana's proposed amendment.

V. OSMRE's Decision

Based on the above findings, we are not approving Montana's June 7, 2011, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana 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 the State's program to demonstrate 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 OSMRE's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to 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 Montana 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 Montana 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 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 26, 2012.

Allen D. Klein,

Director, Western Region.

Editorial Note: This document was received at the Office of the Federal Register on February 6, 2013.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

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

■ 2. Add § 926.12 to read as follows:

§ 926.12 State program provisions and amendments not approved.

(a) The amendment submitted by letter dated June 7, 2011, Docket ID No. OSM–2011–0011, which proposed changes to the Montana approved program as a result of the Montana Legislature's 2011 passage of a Senate Bill (SB 297) relating to coal beneficiation is not approved.

(b) [Reserved]

[FR Doc. 2013–03065 Filed 2–13–13; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY–040–FOR; Docket ID OSM–2011–0004]

Wyoming Regulatory Program

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

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

SUMMARY: We are issuing a final decision on an amendment to the Wyoming regulatory program (the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Our decision approves in part and disapproves in part the amendment. Wyoming proposes revisions and additions to rules concerning noncoal mine waste, valid existing rights, and individual civil penalties. Wyoming revised its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

DATES: *Effective Date:* February 14, 2013.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Fleischman, Telephone: 307.261.6550, Email address: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

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 April 28, 2011, Wyoming sent us a proposed amendment to its approved regulatory program (SATS number: WY–040–FOR, Administrative Record Docket ID No. OSM–2011–0004) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the amendment partly in response to a February 13, 2008, letter that we sent to Wyoming notifying the State that the Office of Surface Mining Reclamation and Enforcement's (OSMRE) December 17, 1999, Valid Existing Rights (VER) rule changes had been upheld in court and the State should respond to our April 2, 2001, letter sent in accordance with 30 CFR 732.17(c) (''732 letter''). That letter required Wyoming to submit amendments to ensure its program remains consistent with the Federal program. This amendment package is intended to address all required rule changes pertaining to VER. Wyoming also submitted the proposed amendment to address required program amendments at 30 CFR 950.16(r), (s), and (t), respectively, and deficiencies that we identified in a November 7, 1988, 732 letter. These included changes to Wyoming's rules for noncoal mine waste and individual civil penalties.

We announced receipt of the proposed amendment in the June 21, 2011, **Federal Register** (76 FR 36040). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Document ID No. OSM–2011–0004–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 21, 2011. We received comments from three Federal agencies (discussed under ''IV. Summary and Disposition of Comments'').

During our review of the amendment, we identified concerns regarding Wyoming's proposed rule changes in response to the April 2, 2001, 732 letter including revisions to its definition of ''Valid existing rights'' at Chapter 1, Section 2(fl); its newly-proposed ''Needed for and adjacent standard'' definition at Chapter 1, Section 2(fl)(ii)(B)(IV); its newly-proposed VER standards for roads rule at Chapter 1, Section 2(fl)(iii); its procedures for public road waivers at Chapter 12, Section 1(a)(v)(D); its VER submission requirements and procedure rules at Chapter 12, Section 1(a)(vii)(A)(I) and (IV); its requirements for initial review of VER requests at Chapter 12, Section 1(a)(vii)(B)(I) and (IV); its VER public notice and comment requirements at Chapter 12, Section 1(a)(vii)(C)(I)(3.), (C)(II)(2.), and (C)(III); its rules at Chapter 12, Section 1(a)(vii)(D)(I) and (III) concerning how a VER decision will be made; its newly-proposed requirements at Chapter 12, Section 1(a)(vii)(E) providing for administrative