

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

#### Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 7, 1999.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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

#### PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

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

2. Section 948.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

#### § 948.15 Approval of West Virginia regulatory program amendments.

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
May 5, 1999 .....	10-1-99 .....	CSR 38-2-2.11; 2.78; 3.12.a.2, and .2.B; 3.32.b; 3.35; 14.12.a.1; 16.2.c, and .c.3; and 22.4.g.

#### § 948.16 [Amended]

3. Section 948.16 is amended by removing and reserving paragraphs (mmm) and (uuu).

[FR Doc. 99-25551 Filed 9-30-99; 8:45 am]

BILLING CODE 4310-05-P

#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 950

[SPATS No. WY-028-FOR]

#### Wyoming Regulatory Program

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

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

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Wyoming regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Wyoming proposed revisions to and additions of rules for fish and wildlife habitat and resource information, shrub density, certification of maps by a registered professional engineer, geologic descriptions, topsoil substitutes, special bituminous coal mines, archaeological and historic resources, permit transfers, civil penalties, and miscellaneous changes to Appendix A of Wyoming's rules, which concern vegetations sampling methods and reclamation success standards for surface coal mining operations.

Wyoming intends to revise its program to be consistent with the

corresponding Federal regulations and SMCRA.

**EFFECTIVE DATE:** October 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: 307-261-6550; Internet address: GPadgett@OSMRE.GOV.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16 and 950.20.

#### II. Submission of the Proposed Amendment

By letter dated July 13, 1998, (Administrative Record No. WY-33-1), Wyoming sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming's amendment was in response to a December 23, 1985 letter that we sent to Wyoming in accordance with 30 CFR 723.17(c) and in response to the required program amendments at 30 CFR 950.16(b), (c), (g), (v), (x), (ii)(1), and (kk), and on its own initiative. The provisions of its "Coal Rules and Regulations" that Wyoming proposed to revise and add are: (1) Chapter 1, Section 2(ac), revises the definition of "eligible land"; (2) Chapter 1, Section 2(v) revising the definition of critical habitat, (3) Chapter 2, Section 1(e),

revises the section delineating the contents of permit applications; (4) Chapter 2, Section 2(a)(vi)(G)(II), for notification of the U.S. Fish and Wildlife Service; (5) Chapter 2, Section 1(a)(vi)(H), geology description; (6) Chapter 2, Section 2(a)(vi)(J), corrects incorrect references to the Wyoming Statutes; (7) Chapter 2, Section 2(a)(vi)(J)(II), for maps submitted in a permit application; (8) Chapter 2, Section 2(b)(iv)(C), the subsection on revegetation; (9) Chapter 2, Section 2(b)(vi)(C), for the submission of resource information; (10) Chapter 4, Section 2(c)(ix), for the use of selected spoil material; (11) Chapter 4, Section 2(d)(x)(E)(I), the rule on shrub density; (12) Chapter 4, Section 2(d)(x)(E)(III), the rule for revegetation standards on crucial habitat; (13) Chapter 8, Sections 3-4-5, the rules for special bituminous coal mines; (14) Chapter 12, Section 1(a)(iv)(B), rules for properties on the National Register of Historic Places; (15) Chapter 12, Section 1(a)(v)(C), the rule on permitting procedures for properties listed or eligible for listing on the National Register of Historic Places; (16) Chapter 12, Section 1(b)(ii), the rule on procedures for permit transfers; (17) Chapter 16, Section 3(c) and (f), rules concerning civil penalties; (18) Appendix A, Appendix IV, rules for Threatened and Endangered Species in Wyoming; (19) Appendix A, Options I-IV, for minor changes to the shrub density option tables; (20) Appendix A, Section II.C.2.c, corrects the cross-reference to the rule on cropland, hayland or pastureland; (21) Appendix A, Section II.C.3, removes the language referring to the approval of the shrub density rule and replaces it with the August 6, 1996 date of the rule's

approval; and (22) Appendix A, Section VIII.E, also removes the language referring to the approval of the shrub density rule and replaces it with the August 6, 1996 date of that rule's approval.

We announced receipt of the amendment in the July 29, 1998, **Federal Register** (63 FR 40384). In the same document we opened the public comment period and provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on the adequacy of the amendment. Because no one requested a public meeting or hearing, we did not hold one. The public comment period closed on August 28, 1998.

### III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. As discussed below we find that the proposed program amendment submitted by Wyoming on July 13, 1998, is no less effective than the corresponding Federal regulations. Accordingly, we approved the amendment.

#### 1. Nonsubstantive Revisions to Wyoming's Rules and Statute

Wyoming proposes revisions to the following previously-approved rules and statutes that are nonsubstantive in nature and consist of minor, non-substantive changes (corresponding Federal regulation provisions are listed in parentheses):

A. *Chapter 1, Section 2 (ac); Chapter 4, Section 2(d)(x)(E)(I); Appendix A, Section II.C.3; Section VIII.E; (no Federal counterparts)*—[adds date of approval of shrub density rule].

This revision replaces the reference to the approval of the shrub density rule with the August 6, 1996 date of approval of that rule.

B. *Chapter 2, Section 1(e) and Section 2(b)(iv)(c), deletes reference to the defunct State Conservation Commission (no Federal counterpart).*

The State Conservation Commission has been disbanded and replaced by the State Board of Agriculture. However, this Board does not make recommendations for standards and specifications for mine reclamation as did the former State Conservation Commission. Therefore reference to the Commission has been proposed for deletion by the State.

C. *Chapter 16, Section 3(c) and (f), corrects reference to the Wyoming Statute concerning Civil Penalties (no Federal counterpart).*

The reference to the Wyoming Environmental Quality Act in both of the rules noted above is proposed for revision because it no longer references the appropriate statute. Article 9 of the Act was modified by Wyoming's 1995 Legislature. Many of the provisions within W.S. 35-11-901 were repealed from that subsection and moved into a new subsection numbered 35-11-902, entitled "Surface Coal Mining operations; violations of provisions, penalties." The changes proposed above now correctly reference Article 9.

D. *Appendix A, Section II.C.2.c; corrects cross reference from shrub density to cropland standard (no Federal counterpart).*

This revision changes the incorrect cross-reference from the shrub density standard on eligible coal mined lands, 2(d)(x)(E), to the reclamation requirements for cropland, 2(d)(x)(I).

E. *Appendix A, Options I-IV, fifteen minor changes to shrub density option tables (no Federal counterpart);* Wyoming's Land Quality Division (LQD) held a workshop for industry representatives and consultants on September 30 and October 1, 1996 to discuss and describe the newly adopted shrub density standard for coal operators. As part of this discussion, several errors, inconsistencies and improvements were identified. These figures have therefore been proposed for revision to correct the errors and improve the readability of the information.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, we find that they are no less effective than the Federal regulations and we therefore approve them.

#### 2. Chapter 1, Section 2(v), Definition of Critical Habitat

In the August 6, 1996 **Federal Register**, we approved Wyoming's rule definition of "critical habitat" at Chapter I, section 2(v) but recommended that Wyoming delete references to the Secretary of Commerce and to the Department of Commerce regulations at 50 CFR part 226 (finding No. 3 61 FR 40735, 40736). OSM recommended this change because the Secretary of Commerce has jurisdiction over marine mammals which has no relevance to the State of Wyoming since Wyoming has no marine mammals.

In this proposed rule definition, Wyoming deleted these references.

We find that Wyoming's revised rule definition of "critical habitat" at chapter I, section 2(v) is no less effective than the Federal regulations at 30 CFR 780.16(a) and (b), 816.997(b), and

817.97(b). We approve the revised definition.

#### 3. Chapter 2, Section 2(a)(vi)(G)(II), Notification of FWS if Critical/Crucial Habitat Destruction Is Likely

In the August 6, 1996 **Federal Register** notice, we required Wyoming to clarify that the U.S. Fish and Wildlife Service (USFWS) will be contacted by the Administrator of the LQD in the event that habitat declared to be "critical" is threatened by any mining related activity. (Finding No. 10, 61 FR 40741)

In the proposed rule Wyoming clarifies that the U.S. Fish and Wildlife Service shall be contacted if critical habitat destruction is likely.

We find that Wyoming's proposed rule clarification at Chapter 2, Section 2(a)(vi)(G)(II) is no less effective than the Federal regulations at 30 CFR 780.16(a) and (a)(2)(i). We approve the revision.

#### 4. Chapter 2, Section 2(a)(vi)(H), Description of Areal and Structural Geology in the Permit Application

In a final rule **Federal Register** notice dated July 25, 1990 (finding No. 2, 55 FR 30221, 30223), we approved Wyoming's revisions to counterparts to 30 CFR 780.22(b)(1) and 784.22(b)(1) relating to geologic permitting information. However, we required that Wyoming amend its rules to mandate that the geologic description include areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground water. This requirement was codified at 30 CFR § 950.16(b).

In the proposed rule Wyoming added the required language.

In addition to the above, Wyoming is proposing to add the words "by extrapolation" before the words "adjacent areas." This change, which has no counterpart in the Federal rule, is being proposed to make it clear that a mining operator may use drilling information from within the permit area to extrapolate out to adjacent areas in order to describe the geology of the adjacent areas in the event that legal access to these areas for drilling purposes is not available. This provision does not relieve companies from using existing information to characterize adjacent areas or conduct field investigations of surface water characteristics outside the permit area if needed. This provision only alleviates the need to drill outside the permit area

in situations where permission for access cannot be obtained. Because the Federal regulations at 30 CFR 780.22(b)(2) and 784.22(b)(2) only require the results of drilling from within the permit area, the State's use of the phrase, "by extrapolation" is no less effective than the Federal requirement.

In addition to the above, the phrase "prepared or certified by a licensed professional geologist" has also been added to this rule. This was recommended by the Wyoming State Geologist because the recently-adopted Wyoming Geologists Practice Act requires that the geologic reports in these descriptions must be prepared or certified by a licensed professional geologist. Subsection 33-41-102 of the Wyoming Geologists Practice Act provides a definition for the "practice of geology before the Public". This definition includes "preparation of geologic reports and maps, the inspection of geological work and the responsible supervision of geological services or work, the performance of which is relevant to public welfare or the safeguard of life, health, property and the environment."

Wyoming proposed several other provisions to this rule. The first is the addition of the phrase "or other qualified professional (as required by W.S. §§ 33-41-101 through 121)."

Wyoming also proposed adding several additional words to this rule. The term "adversely" is proposed to be added to modify "affected" and "by mining" has been added after "affected." Both changes are intended to make it clear that the detailed geologic description only needs to include the aquifer below the lowest coal seam to be mined if that aquifer is clearly going to be adversely affected by mining. Wyoming's rule at Chapter 2, Section 2(a)(vi)(H) is no less effective than the Federal regulations at 30 CFR 780.22(b)(1) and 784.22(b)(1). We approve the proposed rule.

**5. Chapter 2, Section 2(a)(vi)(J), Corrects References to Wyoming Statutes; Adds "Licensed Professional Geologist"**

Wyoming's proposal corrects two references to the Wyoming Statutes cited in the above rule. Subsection 33-29-111 was renumbered to 33-29-139 during the 1987 Wyoming Legislative session and Subsection 9-3-1402 was renumbered to 9-2-802 during 1982 Legislative session. However, Statute 9-2-802 was repealed by the 1997 Legislature and replaced by the Wyoming Geologists Practice Act. This Act consists of subsections 33-41-101 through 33-41-121.

The phrase "licensed professional geologist" is also proposed to be inserted into this rule to make it clear that these types of maps and cross-sections of the area affected within the permit can now also be certified by a registered professional geologist as allowed by the new Act. The authority for including this additional choice for certification is also provided in subsections 33-41-102(a)(viii) and 33-41-104(a)(iii) of the Wyoming Geologists Practice Act.

The Federal counterpart for this rule is 30 CFR 779.25, which provides that such maps and plans can also be prepared by professional geologists. We find that Wyoming's proposed rule is no less effective than the Federal rule and approve the revision.

**6. Chapter 2, Section 2(a)(vi)(J)(II), Strike and Dips of Coal Seams in Permit Application Maps**

As part of the July 25, 1990 **Federal Register** (finding 3, 55 FR 30221), we required that Wyoming amend its rules at Chapter II, Section 3(a)(vi)(C)(II) to require that maps and cross sections show the strike and dip of the coal seam to be mined. This proposed rule has previously been reorganized and recodified as Chapter 2, Section 2(a)(vi)(J)(II), and Wyoming added the required language.

We find that Wyoming's revised Chapter 2, Section 2(a)(vi)(J)(II) is no less effective than the Federal regulations at 30 CFR §§ 779.25(a)(4) and 783.25(a)(4). We approve the revised rule.

**7. Chapter 2, Section 2(b)(vi)(c), Submission of Resource Information When Requested by the U.S. Fish and Wildlife Service**

In a 30 CFR Section 732 letter dated November 7, 1988, we required Wyoming to modify its program at Chapter II, Section 3(b)(iv). Wyoming consequently reorganized and recodified this rule as Chapter 2, Section 2(b)(vi)(C) to state that, if the appropriate U.S. Fish and Wildlife Service (USFWS) office wishes to review specific fish and wildlife resource information and the proposed protection and enhancement plan contained in a permit application, the Division will provide this information to the USFWS within ten days of receipt of such a request. Wyoming's proposal includes revision to Chapter 2, Section 2(b)(vi)(C) adding the required provision.

We find that Wyoming's revision is no less effective than the Federal regulation at 30 CFR 780.16(c) and 784.21(c) and therefore approve it.

**8. Chapter 4, Section 2(c)(ix), Use of Selected Spoil as a Topsoil or Subsoil Substitute**

The Federal regulations at 30 CFR 816.22(b) state that selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the regulatory authority that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support vegetation. 30 CFR 780.18(b)(4) requires that a demonstration of the suitability of topsoil substitutes or supplements be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The regulatory authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

The proposed State rule limits the use of topsoil substitutes or supplements to those situations where there is insufficient volume of suitable topsoil or subsoil for salvage and redistribution. While Wyoming's proposed rule does not include counterparts to the Federal requirements to identify the thickness or areal extent of different kinds of soil substitutes, this does not adversely affect its ability of the State to determine that the proposed topsoil substitute or supplement is equal to, or more suitable for sustaining vegetation and is the best available in the permit area to support vegetation. As proposed, the Wyoming rule at chapter 4, Section 2(c)(ix) is consistent with and no less effective than the Federal regulations at 30 CFR 780.18(b)(4) and 816.22(b). We approve the proposed rule.

**9. Chapter 4, Section 2(d)(x)(e)(III), Approval Authority of Wyoming's Game and Fish Department for Revegetation Standards on Crucial Habitat Declared as Such Prior to Submittal of a Permit Application**

In the August 6, 1996 **Federal Register** (FR 40738), we required Wyoming to revise its rules at Chapter 4, section 2(d)(x)(E)(III) to require Wyoming Game and Fish Department approval of revegetation standards for grazing land that was designated by the Wyoming Game and Fish Department as crucial habitat prior to submittal of the initial permit application or any subsequent amendments to the permit application.

Wyoming has added a requirement to Chapter 4, section 2(d)(x)(e)(III) to require Wyoming Game and Fish Department approval of revegetation standards for grazing land that was designated by the Wyoming Game and Fish Department as crucial habitat prior to submittal of the initial permit application or any subsequent amendments to the permit application. This addition meets the requirements of 30 CFR 950.16(ii)(1) and is no less effective than its counterpart at 30 CFR 816.116. We approve the proposed rule.

*10. Chapter 8, Section 3-4-5, Special Alternative Standards for Existing and New Special Bituminous Coal Mines; General Performance Standards*

Section 527 of SMCRA addresses the performance standards for special bituminous coal surface mines. Wyoming meets the criteria specified in Section 527; therefore it is authorized to issue separate regulations for its special bituminous coal surface mines located west of the 100th meridian west longitude. 30 CFR 825 of the Federal regulations further specifies that "special bituminous coal mines in Wyoming, as specified in section 527 of SMCRA, shall comply with the approved State program, including Wyoming statutes and regulations, and revisions thereto."

The Wyoming standards for backfilling and grading the mine pit area and spoil piles associated with a new special bituminous coal mine are currently provided in Chapter 8 through cross-referencing to Section 2(b) in Chapter 4. However, during the December, 1992 reorganization of the LQD rules into specific Coal and Noncoal sets, the rule additions being proposed here at Section 4(a)(i) through (iv) were inadvertently excluded from applying to new special bituminous coal mines.

In order to rectify this omission, this rule is proposed for amendment into Chapter 8. These rules are the same as currently found in Chapter III, Section 2(b) of the LQD Noncoal rules, with one exception. The phrase "or that greater slopes would enhance the postmining land use" has not been incorporated into the amended language for Chapter 8. This phrase, which does exist in the Noncoal rules at Section 2(b)(ii), was originally incorporated into the LQD rules on December 5, 1988. The inclusion of this phrase was then submitted to us for approval on December 13, 1988. We subsequently disapproved the addition of this phrase in the December 26, 1989 **Federal Register** (54 FR 52958) because it was not part of the rules originally intended

to apply to new special bituminous mines and therefore could not be applied to new special bituminous mines.

This proposed Wyoming rule also adds a reference to Section 4 within the renumbered Section 5. General Performance Standards. Section 4, Special Alternative Standards for New Special Bituminous Coal Mines, must be included in Section 5 to make it clear that a new special bituminous mine shall also comply with the performance standards contained in SMCRA and Chapter 4 to the extent that such performance standards do not preclude the benefit intended under the special alternative regulations contained in either Section 3 or 4 of Chapter 8. The proposed Wyoming rule is no less effective than the Federal rule and we approve it.

*11. Chapter 12, Section 1(a)(iv)(B), Effective on Properties on the National Register of Historic Places Must Be Taken Into Account Prior to Permit Approval*

In a final rule **Federal Register** notice dated October 29, 1992 (57 FR 48984, 48988), we found Wyoming's proposed rule at Chapter XIII, Section 1(a)(v) to be less effective than the Federal regulations to the extent that it did not include a finding for properties listed on the National Register of Historic Places. (This rule has been previously recodified as Chapter 12, Section 1(a)(iv)(B)). Consequently, we asked Wyoming to revise its rules at Chapter 12, Section 1(a)(iv)(B) by including findings for properties listed on the National Register of Historic Places as required in 30 CFR 773.15(c)(11). In response to this required amendment, Wyoming proposes to revise its rule by adding the additional language set forth above.

In addition, partly in response to comments from the Wyoming State Historic Preservation Office, the State has added the word "properties" to modify "eligible" and to make it clear that these properties must also be taken into consideration.

The symbol for subsection (§) is also proposed for insertion into the rule at Chapter 12, Section 1(a)(iv)(B) to maintain consistent style.

We find the Wyoming revision to be no less effective than 30 CFR 773.15(c)(11) and therefore approve it.

*12. Chapter 12, Section 1(a)(v)(C), Permitting Procedures*

In the July 25, 1990 **Federal Register** (55 FR 30221, 30227-28), we required Wyoming to revise its rules at Chapter XIII, Section 1(a)(v)(C) to reinstate the

word "any" in front of the phrase "places included in the National Register of Historic Places" because its deletion did not assure that privately and publicly-owned properties listed on the National Register of Historic Places would be protected from disturbance by mining. Wyoming reinstated the word "any". This rule has been previously reorganized and recodified as Chapter 12, Section 1(a)(v)(C).

In addition, Wyoming proposed adding the word "where" to replace "which" to make the rule more understandable, along with the addition of the word "mining." These proposed changes also make the introductory portion of this rule identical to the introductory portion of the counterpart Federal rule at 30 CFR § 761.11(c).

In response to a suggestion by the Wyoming State Historic Preservation Office, Wyoming included properties eligible for listing on the National Register along with properties listed to be taken into consideration when determining whether surface coal mining would be prohibited or limited if mining were to adversely affect any of these properties.

We find Wyoming's proposed revision to be no less effective than the Federal regulations at 30 CFR 761.H(C) and therefore approve it.

*13. Chapter 12, Section 1(b)(ii), Delete Reference to some Public Participation Requirements for Permit Transfers*

Wyoming proposes to add a provision to Chapter 12, Section 1(b)(ii) that permit transfers shall not be subject to the requirements of WS-35-11-406(g). This provision had required a determination of completeness for permit transfers and other procedural steps not required by the Federal provisions. We find that the proposed revision is no less effective than 30 CFR 774.17 and therefore approve it.

*14. Appendix A, Appendix IV, Revises Rules by Adding and Deleting Plants to the List of Threatened and Endangered Species in Wyoming*

Wyoming is proposing revision to Appendix IV within Appendix A for plant species of special concern. The existing list in Appendix IV is out-of-date and will continually be out-of-date because new plants and new populations of existing plants will be discovered in the future. We brought this to Wyoming's attention in our March 8, 1996 comment letter and by comments from the Bureau of Land Management in the August 6, 1996 **Federal Register** notice. Rather than attempt to keep this list up-to-date, the State is proposing to provide in this

Appendix only those species listed as threatened, endangered, or eligible for such listing by the U.S. Fish and Wildlife Service. This listing is necessary because operators are required by Chapter 2, Section 2(a)(vi)(C)(III), to describe the location of any State or Federally listed endangered or threatened plant species occurring within or adjacent to the permit area. Consequently, it is important that the plant species currently listed by the U.S. Fish and Wildlife Service be available to coal operators.

Wyoming will consult with the U.S. Fish and Wildlife Service on an annual basis to determine whether the list included in this Appendix needs to be updated. If there are new threatened or endangered species listed by the U.S. Fish and Wildlife Service that need to be added to this list, this will be accomplished through formal rulemaking. Formal rulemaking will also be initiated if a plant species needs to be removed from this Appendix because it has been delisted by the U.S. Fish and Wildlife Service.

The other plants currently appearing on this list and now proposed for removal include those plants considered to be of special concern in Wyoming, but not formally classified as threatened or endangered by the State. Rather than attempt to keep this list up-to-date through rulemaking, Wyoming is proposing to consult with all state entities that have current data on plant species that are of special concern in Wyoming. This information will be compiled and updated annually if necessary by the Land Quality Division and be made available to the public upon completion. When possible, this compiled summary will be updated and made available to the public prior to the summer field sampling season. There is no Federal counterpart to this appendix and the revision is not inconsistent with Federal regulations. We therefore approve it.

#### IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that we received, and our responses to them.

##### 1. Public Comments

We invited public comments on the proposed rule but didn't receive any (Administrative Record No. WY-33-01).

##### 2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal

agencies with an actual or potential interest in the Wyoming program (administrative record No. WY-33-05).

The U.S. Department of Agriculture responded on July 23, 1998 that "we want to commend the Wyoming Department of Environmental Quality staff on the amount of effort that has gone into the changes dealing with geologic descriptions, certification of maps and cross sections, National Register of Historic Places, topsoil substitutes, revegetation and wildlife. The language appears acceptable" (administrative record No. WY-33-07).

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

Pursuant to 30 CFR 732.17(h)(11)(ii), we are required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). In reply to our July 20, 1998 request for comments, James Dunn of the EPA, in a September 1, 1998 letter (Administrative Record No. WY-33-13) concurred with the modifications proposed in the amendment.

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

Pursuant to 30 CFR 732.17(h)(4), we solicited comments on the proposed amendment from the ACHP and SHPO. (administrative record No. WY-33-03, WY-33-04). Neither the SHPO nor the ACHP responded to OSM's request.

#### V. Director's Decision

Based on the above findings, we approve Wyoming's proposed amendment as submitted on July 13, 1998.

We approve, as discussed in: Finding No. 1, miscellaneous citations, concerning nonsubstantive revisions to Wyoming's rules; finding No. 2, Chapter 1, Section 2(v), concerning the definition of critical habitat; finding No. 3, Chapter 2, Section 2(a)(vi)(G)(II), concerning the notification of the Fish and Wildlife Service if critical or crucial habitat destruction is likely; finding No. 4, Chapter 2, Section 2(a)(vi)(H), concerning the description of areal and structural geology in the permit application; finding No. 5, correcting the references to Wyoming Statutes and adding "licensed professional geologist;" finding No. 6, concerning strikes and dips of coal seams in permit application maps; finding No. 7, Chapter 2, Section 2(b)(vi)(c),

concerning the submission of resource information when requested by the U.S. Fish and Wildlife Service; finding No. 8, Chapter 4, Section 2(c)(ix), concerning use of selected spoil as a topsoil or subsoil substitute; finding No. 9, Chapter 4, Section 2(d)(x)(E)(III), concerning approval authority of Wyoming's Game and Fish Department for revegetation standards on crucial habitat declared as such prior to submittal of a permit application; finding No. 10, Chapter 8, Section 3-4-5, concerning special alternative standards for existing and new special bituminous coal mines and the general performance standards; finding No. 11, Chapter 12, Section 1(a)(iv)(B), concerning taking into account prior to permit approval the effect on properties listed on the National Register of Historic Places; finding No. 12, Chapter 12, Section 1(a)(v)(C), concerning permitting procedures; finding No. 13, Chapter 12, Section 1(b)(ii), concerning the deletion of the reference to public participation requirements for permit transfers; finding No. 14, Appendix A, Appendix IV, concerning the revision of rules by adding and deleting plants to the list of Threatened and Endangered Species in Wyoming.

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

#### VI. Procedural Determinations

##### 1. Executive Order 12866

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

##### 2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by us. 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.

### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### 4. Paperwork Reduction Act

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

### 5. Regulatory Flexibility Act

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

### 6. Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

### List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 20, 1999.

**Brent Wahlquist,**

*Regional Director, Western Regional Coordinating Center.*

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

### PART 950—WYOMING

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

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

2. Section 950.15 is amended 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
* * *	* * *	* * *
July 13, 1998 .....	10-1-99 .....	Chapter 1, Section 2(ac); Chapter 1, Section 2(v); Chapter 2, Section 1(e); Chapter 2, Section 2(a)(vi)(G)(II); Chapter 2, Section 2(a)(vi)(H); Chapter 2, Section 2(a)(vi)(J); Chapter 2, Section 2(a)(vi)(J)(II); Chapter 2, Section 2(b)(iv)(C); Chapter 2, Section 2(b)(vi)(C); Chapter 4, Section 2(c)(ix); Chapter 4, Section 2(d)(x)(E)(I); Chapter 4, Section e(d)(x)(E)(III); Chapter 8, Sections 3-4-5; Chapter 12, Section 1(a)(iv)(B); Chapter 12, Section 1(a)(v)(C); Chapter 12, Section 1(b)(ii); Chapter 16, Sections 3 (c) and (f); Appendix A, Appendix IV; Appendix A, Options I-IV; Appendix A, Section II.C.2.c; Appendix A, Section II.C.3; Appendix A, Section VIII.E.

#### § 950.16 [Amended]

3. Section 950.16 is amended by removing and reserving paragraphs (b), (c), (g), (v), (x), (ii)(1), and (kk).

[FR Doc. 99-25553 Filed 9-30-99 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

[CGD07 99-056]

RIN 2115-AE46

### Special Local Regulations: Winston Offshore Cup, San Juan, Puerto Rico

AGENCY: Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Temporary special local regulations are being adopted for the Winston Offshore Cup, San Juan, Puerto Rico. The event will be held from 1 p.m. to 2:30 p.m. Atlantic Standard Time (AST) on October 10, 1999, in and north of San Juan Harbor, Puerto Rico. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** This section becomes effective at 12 p.m. and terminates at 3:30 p.m. on October 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Reyes at (787) 729-5381.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

On August 2, 1999, the Coast Guard published a Notice of Proposed

Rulemaking in the **Federal Register** (64 FR 41853) proposing to establish a regulated area for the Winston Cup race in San Juan, Puerto Rico on October 10, 1999. No comments were received during the comment period.

#### Background and Purpose

These regulations create a regulated area in and north of San Juan Harbor that would prohibit entry to non-participating vessels. The participating race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard on the navigable waterways. These regulations are required to provide for the safety of life on navigable waters during the Winston Offshore Cup, San Juan, Puerto Rico.

In accordance with 5 U.S.C. 553, good cause exists for making this regulation