

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

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

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

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. WY-35-6), but did not receive any.

##### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Wyoming program (Administrative Record No. WY-35-6).

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

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

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

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

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 5, 2002, we requested comments on Wyoming's

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

#### V. OSM's Decision

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

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

##### *Effect of OSM's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Wyoming program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Wyoming to enforce only approved provisions.

#### VI. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

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

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

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

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

##### *Executive Order 13132—Federalism*

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