

regulatory authority” because OSM did not require it. The rule is therefore no less effective than the Federal regulations.

6. *Chapter 4, Section 2(j)(vi), Road Reclamation.* In the February 21, 1990, 30 CFR part 732 letter (Item E-8) that OSM sent to Wyoming, OSM indicated that the State must adopt the Federal minimum standards for road reclamation. Consequently, Wyoming is proposing to adopt the counterpart Federal rules. However, the proposed adoption at Chapter 4, Section 2(j)(vi)(B) provides an alternative to operators regarding culverts in roadways that are being reclaimed. Rather than having to remove a culvert if it is not an approved part of the postmining land use, the operator can approach the Administrator about leaving the culvert buried in place for perpetuity. If an operator chooses this alternative, the operator will be required to provide a plan which will guarantee that there will not be any subsidence associated with the culvert in the future and that the culvert will be buried at a sufficient depth to prevent erosion (wash out) of the culvert. Offering operators a reasonable alternative to removing culverts in roadways, Wyoming’s rule is no less effective than its Federal counterpart.

The proposed adoption at Chapter 4, Section 2(j)(vi)(F) also mentions subsoil because Wyoming Coal Rules contain specific provisions regarding subsoil handling, which are not mentioned in the Federal counterpart rule. The proposed rule is therefore no less effective than the Federal regulations since it regulates more than the Federal provisions.

7. *Chapter 4, Section 2(c)(xi)(F), Temporary Overburden and Spoil Piles.* This rule is proposed for adoption to make it clear that temporary overburden or spoil piles also warrant the use of prudent location, design and construction practices in order to ensure the safety and stability of these temporary piles. OSM has determined that the proposed State rule does not conflict with the backfilling and grading requirements of 30 CFR 816.102. The proposed rule requires the use of prudent engineering practices to ensure safety and stability of any temporary stockpiles. Once mining is complete, material would be returned to the mined area and be subject to the general backfilling and grading or excess spoil disposal rules. The proposed rule is not inconsistent with the intent of SMCRA and is no less effective than the Federal regulations.

8. *Chapter 4, Section 2(c)(xi)(G), Excess Spoil.* This revision simply

makes some minor word changes as well as reorganizes the existing excess spoil rules which had been previously approved by OSM. Therefore, the revision is no less effective than the Federal rules.

9. *Appendix A, Appendix IV, List of Threatened and Endangered Plant Species.* On its own initiative, Wyoming had attempted to keep this list, prepared by the U.S. Fish and Wildlife Service (FWS), up to date in this appendix. However, because this involved rulemaking and was a lengthy process, Wyoming attempted to simply refer the reader to the FWS office. This turned out to be in conflict with Wyoming Statute 16-3-103(h) and is therefore now proposed for removal. Since having the list in an appendix was a State initiative, removing it is does not affect the effectiveness of Wyoming’s rules.

10. *Chapter 5, Section 7(a)(ii), Remining.* OSM asked Wyoming’s Land Quality Division, in a March 31, 1986, **Federal Register** notice (51 FR 10827) to remove some language in Wyoming’s rules that was less effective than the Federal counterpart regulations. The language in question was submitted to OSM on March 31, 1989, and was approved by OSM for removal in the July 25, 1990, **Federal Register** notice (55 FR30221). It is therefore acceptable to remove it from Wyoming’s master list of outstanding disapprovals.

D. Revisions to Wyoming’s Coal Rules With No Corresponding Federal Regulations

1. *Chapter 4, Section 2(j)(i)(A), Roads.* Wyoming proposed this rule for repeal because it was cited by OSM in the November 26, 1986, **Federal Register** as being less effective than the Federal regulations. The Federal definition of “surface coal mining activities” includes all lands affected by the construction of new roads or use of existing roads to gain access to the site, not just those that are constructed or upgraded (which is what the current State rule says). In addition, Federal rules do not limit the inclusion of a road or railroad as being part of a permit area if they provide exclusive service to a particular operator (which is also what the current State rule says).

This current language is no longer necessary in the State rules with the adoption of the Federal definition of roads (which makes it clear that any “surface corridor of affected land associated with travel by a land vehicle used * * *” is considered a road. There is no distinction as to whether the road has been constructed or upgraded. If it is being used, it is considered to be part of a “surface coal mining operation.”

Eliminating this State rule will make Wyoming’s rule consistent with its Federal counterpart.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. WY-36-5), 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-36-5). No comments were received.

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.*).

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. WY-36-5). 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 ACHP and SHPO on amendments that may have an effect on historic properties. On December 10, 2002, we requested comments on Wyoming’s amendment (Administrative Record No. WY-36-3 and 4), but neither responded to our request.

V. OSM’s Decision

Based on the above findings, we approve Wyoming’s November 28, 2002, amendment, as follows: Finding A, minor revisions to Wyoming’s Coal Rules at Chapter 1, Section 2, 2(a), 2(b); Finding B, revisions to Wyoming’s rules that have the same meaning as the corresponding provisions of the Federal regulations: finding B.1, Section 2(ah), definition of existing structure; finding B.2, Chapter 1, Section 2(bu), definition of public road; finding B.3, Chapter 1, Section 2(bz), definition of road; finding B.4, Chapter 2, Section 2(a)(v), 2(a)(v)(I)(1), 2(b)(iii), and 2(b)(xxi), Mine Safety and Health Administration identification number; finding B.5, Chapter 2, Section 2(b)(xix), road systems; finding B.6, Chapter 4, Section