

2(c)(i)(A), topsoil removal exemption; finding B.7, Chapter 4, Section 2(j), roads; finding B.8, Chapter 4, Section 2(j)(ii), roads: general performance standards; finding B.9, Chapter 4, Section 2(j)(iii), roads-design and construction; finding B.10, Chapter 4, Section 2(j)(iii)(B), primary road-Fords; finding B.11, Chapter 4, Section 2(j)(iii)(C)(I), primary road-drainage control; finding B.12, Chapter 4, Section 2(j)(iii)(C)(II), primary road-haul and access roads; finding B.13, Chapter 4, Section 2(j)(iii)(C)(III), primary road-drainage pipes and culverts; finding B.14, Chapter 4, Section 2(j)(iii)(C)(IV), drainage ditches; finding B.15, Chapter 4, Section 2(j)(iii)(C)(V), primary road-culverts; finding B.16, Chapter 4, Section 2(j)(vii), primary road-surface water runoff; finding B.17, Chapter 4, Section 2(j)(viii), exemptions concerning roads; finding B.18, Chapter 4, Section 2(m), removal and reclamation of mine facilities; finding B.19, Chapter 4, Section 2(n)(ii)(B)(2), minimizes additional contributions of suspended solids to streamflow outside of the permit area; finding B.20, Chapter 4, Section 2(x), utility installation; finding B.21, Chapter 12, Section 1(a)(v), permitting procedures; finding B.22, Chapter 18, Section 3(c)(xvii), Section 3(d)(vi)(A), Section 3(d)(x), permit applications; Finding C, revisions to rules that are not the same as the corresponding provisions of the Federal Regulations: finding C.1, Section 2(a) and (b), contents of an application for a surface coal mining permit (Chapter 2, Section 2(b)(iv)(G)); finding C.2, Chapter 2, Section 2(b)(i)(D)(v), Operation Plan: Maps and Plans; finding C.3, Chapter 4, Section 2(j)(iv), Roads-location; finding C.4, 2(j)(iii)(D), Primary Road; finding C.5, Chapter 4, Section 2(j)(v), road maintenance and repair; finding C.6, Chapter 4, Section 2(j)(vi), road reclamation; finding C.7, Chapter 4, Section 2(xi)(F), temporary overburden and spoil piles; finding C.8, Chapter 4, Section 2(c)(xi)(G), excess spoil; finding C.9, Appendix A, Appendix IV, list of Threatened and Endangered Plant Species; finding C.10, Chapter 5, Section 7(a)(ii), remining; finding D, revisions to Wyoming's Coal Rules with no corresponding Federal Regulations: finding D.1, Chapter 4, Section 2(j)(i)(A), roads.

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

To implement this decision, we are amending the Federal regulations at 30 CFR Part 950, which codify decisions

concerning the Wyoming program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

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

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

#### **VI. Procedural Determinations**

##### *Executive Order 12630—Takings*

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

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

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

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

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

submission 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 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory