

acts of an employer with respect to all of the wages Corporation P paid to the individuals performing services for Employer for all quarters of 2015. Employer and Corporation P are each subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(5) *Example 5.* Same facts as *Example 1*, except that after Corporation P reports the wage and tax amounts on Form 941, *Employer's QUARTERLY Federal Tax Return*, filed for each quarter of 2015 under Corporation P's employer identification number, Corporation P files a claim for refund of the employment taxes it paid for each quarter of 2015 that are related to wages Corporation P paid to the individuals performing services for Employer. The basis for Corporation P's refund claim is that Corporation P is not the employer of the individuals that performed services for Employer. Corporation P is designated to perform the acts of an employer with respect to all of the wages Corporation P paid to the individuals performing services for Employer for all quarters of 2015. Accordingly, Corporation P is not entitled to a refund. Employer and Corporation P are each subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(6) *Example 6.* Corporation S enters into an agreement with Employer, effective January 1, 2015. Under the agreement, Corporation S provides payroll services, including payment of wages to individuals performing services for Employer, and assumes responsibility for the collection, reporting, and payment of applicable taxes. For all pay periods in 2015, Employer provides Corporation S with an amount equal to the gross payroll (that is, wage and tax amounts) of the individuals, and Corporation S pays wages (less the applicable withholding) to the individuals performing services for Employer. Corporation S also reports the wage and tax amounts on Form 941, *Employer's QUARTERLY Federal Tax Return*, filed for each quarter of 2015 under Employer's employer identification number. Corporation S is not designated to perform the acts of an employer with respect to all of the wages Corporation S paid to the individuals performing services for Employer for all quarters of 2015. Corporation S did not assert it was the employer and filed Forms 941 using Employer's employer identification number. Accordingly, Corporation S is not liable for the applicable employment taxes under this section. Employer remains subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(7) *Example 7.* Corporation T enters into a consulting agreement with Manufacturer effective January 1, 2015, to provide consulting services to Manufacturer. Corporation T is responsible to pay wages to the individuals providing the consulting services to Manufacturer and to collect, report, and pay the applicable taxes. Corporation T has the right to direct and control the individuals as to when and how to perform the consulting services and, thus, is the common law employer of the

individuals providing the consulting services. Corporation T is not designated to perform the acts of an employer with respect to all of the wages Corporation T pays to individuals providing consulting services to Manufacturer. However, as the common law employer of the individuals, Corporation T is subject to all provisions of law (including penalties) applicable in respect of employers with respect to such wages.

(8) *Example 8.* On January 1, 2015, Corporation U enters into an agreement with Employer for Employer to farm Corporation U's property. Under the agreement, Corporation U and Employer agree to split the proceeds of the sale of the products grown on the property. Employer hires workers to assist it with the farming. Employer has the right to direct and control the workers as to when and how to perform the services and, thus, is the common law employer of the workers. However, Employer is unable to pay the workers until after the products are sold. Therefore, Corporation U pays wages to the workers and deducts this amount from Employer's share of the profits. Corporation U controls the payment of wages within the meaning of section 3401(d)(1). Corporation U is not designated to perform the acts of an employer with respect to all of the wages Corporation U paid to workers providing services for Employer. However, as the section 3401(d)(1) employer of the workers performing services for Employer, Corporation U is subject to all provisions of law (including penalties) applicable in respect of employers with respect to such wages.

(9) *Example 9.* Corporation V and Employer execute and submit a Form 2678, *Employer/Payer Appointment of Agent*, to the Service, requesting approval to authorize Corporation U to report, deposit, and pay taxes with respect to wages it pays, as agent of Employer for purposes of Form 941, *Employer's QUARTERLY Federal Tax Return*. The Form 2678 is approved by the Service and effective for all quarters of 2015. Accordingly, Corporation V reports the wages it pays to individuals performing services for Employer and related tax amounts on Form 941 and Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*, filed for each quarter of 2015 under Corporation V's employer identification number. Corporation V is not designated under this section to perform the acts of an employer with respect to all of the wages Corporation V paid to the individuals performing services for Employer for all quarters of 2015. However, as an agent authorized under § 31.3504-1(a), Corporation V is subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages. Employer also remains subject to all provisions of law (including penalties) applicable in respect of employers for all quarters of 2015 with respect to such wages.

(f) *Effective/applicability date.* These final regulations are effective for wages or compensation paid by a payor in

quarters beginning on or after March 31, 2014.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: March 20, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014-07152 Filed 3-28-14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No: WY-044-FOR; Docket ID: OSM-2013-0001; S1D1SSS08011000 SX066A00067F144S180110; S2D2SSS08011000SX066A00033 F14XS501520]

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 to rules concerning 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:* March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Chief, Denver Field Division, Telephone: 307-261-6550, Internet address: jfleischman@OSMRE.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Wyoming Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

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 January 4, 2013, Wyoming sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM–2013–0001) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the amendment in response to a concern letter OSM sent relating to valid existing rights (VER) and a **Federal Register** notice (78 FR 10512) that disapproved several VER rule changes that were required by an April 2, 2001, letter we 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 remaining required rule changes pertaining to VER. Wyoming also proposes changes to its rules for individual civil penalties that were disapproved in the **Federal Register** notice.

We announced receipt of the proposed amendment in the March 14, 2013, **Federal Register** (78 FR 16204). 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–2013–0001–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on April 15, 2013. We received comments from two 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 a November 7, 1988, 732 letter and the **Federal Register** notice (78 FR 10512, 10518) concerning its newly-proposed rules at Chapter 16, Section 4(c)(i)(A) imposing criteria that shall be considered when determining the amount of an individual civil penalty to be assessed, and its proposed revisions at Chapter 12, Section 1(a)(vii)(F) regarding availability of records in response to the April 2, 2001, 732 letter. We notified Wyoming of these concerns by letter dated June 24, 2013 (Administrative Record Document ID No. OSM–2013–0001–0010).

We delayed final rulemaking to afford Wyoming the opportunity to submit new material to address the deficiencies. Wyoming responded in a letter dated August 5, 2013, that it could not currently submit additional formal revisions to the amendment due to the administrative rulemaking requirements for promulgation of revised substantive rules (Administrative Record Document ID No. OSM–2013–0001–0011). Specifically, Wyoming explained that the required changes would be considered substantive in nature and therefore the Land Quality Division (LQD) is required to present the proposed rules to the LQD Advisory Board and then the Wyoming Environmental Quality Council for vetting. Following approval by the Governor, the rules may be submitted to OSM for final review. While it could not submit formal changes, Wyoming did submit informal responses to the noted concerns. Therefore, we are proceeding with the final rule **Federal Register** document. Our concerns and Wyoming’s responses thereto are explained in detail below.

III. OSM’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, OSM 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 approving the amendment with certain exceptions as described below.

A. Revisions to Wyoming’s Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

1. Wyoming proposes additions and revisions to the following rules containing language that are the same as or similar to the corresponding sections of the Federal regulations and/or SMCRA. Therefore we are approving them.

Chapter 12, Section 1(a)(v)(D); VER Permitting Procedures; public road waivers [30 CFR 761.14 (b) and (c)];

Chapter 12, Section 1(a)(vii)(A)(I); VER Submission Requirements and Procedures; requests for VER determinations and property rights demonstrations [30 CFR 761.16(b)(1)];

Chapter 12, Section 1(a)(vii)(A)(IV); VER Submission Requirements and Procedures; requests for VER determinations and standards for mine roads; [30 CFR 761.16(b)(4)];

Chapter 12, Section 1(a)(vii)(B)(I); VER Submission Requirements and Procedures; initial review of VER request; [30 CFR 761.16(c)(1)];

Chapter 12, Section 1(a)(vii)(B)(IV); VER Submission Requirements and Procedures; initial review of VER request; [30 CFR 761.16(c)(4)];

Chapter 12, Section 1(a)(vii)(C)(I)(3)(a)–(d); VER Submission Requirements and Procedures; VER notice and comment requirements; [30 CFR 761.16(d)(1)(iii)(A)–(C) and (iv)];

Chapter 12, Section 1(a)(vii)(C)(II)(2.); VER Submission Requirements and Procedures; VER notice and comment requirements; [30 CFR 761.16(d)(2)(ii)];

Chapter 12, Section 1(a)(vii)(C)(III); VER Submission Requirements and Procedures; VER notice and comment requirements; [30 CFR 761.16(d)(3)];

Chapter 12, Section 1(a)(vii)(D)(I); VER Submission Requirements and Procedures; how a VER decision will be made; [30 CFR 761.16(e)(1)];

Chapter 12, Section 1(a)(vii)(D)(III)(1.) and (2.); VER Submission Requirements and Procedures; how a VER decision will be made; [30 CFR 761.16(e)(3)(i) and (ii)];

Chapter 12, Section 1(a)(vii)(G)(III)(2.); VER Submission Requirements and Procedures; procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places; [30 CFR 761.17(d)(3)(ii)];

Chapter 16, Section 4(a)(iii); Individual Civil Penalties; definition of “Willfully;” [30 CFR 701.5]; and

Chapter 16, Section 4(b)(i); Individual Civil Penalties; when an individual civil penalty may be assessed; [30 CFR 846.12(a)].

2. Chapter 1, Section 2(f)(ii)(B)(IV); Definition of “Needed for and adjacent standard.”

In a previous rulemaking action (WY-040-FOR), Wyoming proposed a new “Needed for and adjacent standard” definition at Chapter 1, Section 2(f)(ii)(B) in response to Item B-5 of OSM’s April 2, 2001, 732 letter. Subsection (IV) of the definition included a requirement that, when evaluating if a person meets that standard, the agency making the decision may consider “Whether the land lies within the area identified on the life-of-mine map submitted before the land came under the protection of 30 CFR 761.11 (2009).” OSM subsequently disapproved proposed subsection (IV) in a February 14, 2013, **Federal Register** notice (78 FR 10512, 10514) because the Federal counterpart provision at 30 CFR 761.5(b)(2)(iv) includes specific citation cross-references requiring the submission of a life-of-mine map as part of a permit application. As a result, we required Wyoming to revise the proposed rule language to specify the applicable counterpart permit application reference for requiring the submission of life-of-mine maps.

In response to the February 14, 2013, disapproval, Wyoming now proposes to revise its rule at Chapter 1, Section 2(f)(ii)(B)(IV) to include specific citation cross-references requiring the submission of a life-of-mine map as part of a permit application. Wyoming’s proposed rule change makes its rule consistent with and no less effective than the Federal counterpart provision at 30 CFR 761.5(b)(2)(iv) and satisfies Item B-5 of the April 2, 2001, 732 letter. Accordingly, we approve it.

3. Chapter 1, Section 2(f)(iii); VER standards for roads.

In a previous rulemaking action (WY-040-FOR), Wyoming proposed a new rule at Chapter 1, Section 2(f)(iii) to apply the VER standard to all roads in response to Item B-5 of OSM’s April 2, 2001, 732 letter. However, the proposed rule language referred to roads included within a “surface mining operation.” OSM subsequently disapproved proposed subsection (iii) in a February 14, 2013, **Federal Register** notice (78 FR 10512, 10515) because the Federal counterpart provision at 30 CFR 761.5(c), as well as the remainder of Wyoming’s rules refer to “surface coal mining operations.” As a result, we required Wyoming to revise its proposed rule language at Chapter 1,

Section 2(f)(iii) to include the term “coal.”

In response to the February 14, 2013, disapproval, Wyoming now proposes to revise its rule at Chapter 1, Section 2(f)(iii) to apply the VER standard to roads included within a “surface coal mining operation.” It should also be noted that Wyoming’s statutory definition of “surface coal mining operation” at W.S. § 35-11-103(e)(xx) was approved by OSM on March 31, 1980, and is substantively identical to the Federal definitions found at Section 701(28) of SMCRA and 30 CFR 700.5, respectively. Wyoming’s proposed language makes its rule consistent with and no less effective than the Federal counterpart provision at 30 CFR 761.5(c) and satisfies Item B-5 of the April 2, 2001, 732 letter. Accordingly, we approve the proposed rule change.

4. Chapter 12, Section 1(a)(vii)(E); Administrative and judicial review.

In a previous rulemaking action (WY-040-FOR), Wyoming proposed to add requirements to its rules at Chapter 12, Section 1(a)(vii)(E) providing for administrative and judicial review of VER determinations in response to Item G-1 of OSM’s April 2, 2001, 732 letter. OSM subsequently disapproved proposed subsection (E) in a February 14, 2013, **Federal Register** notice (78 FR 10512, 10517) because Wyoming did not provide a counterpart reference to the Federal requirements in 30 CFR 761.16(f) regarding the procedures pertaining to administrative and judicial review. As a result, we required Wyoming to revise its proposed rule language at Chapter 12, Section 1(a)(vii)(E) by adding a reference to the Wyoming Administrative Procedure Act.

In response to the February 14, 2013, disapproval, Wyoming now proposes to revise its rules at Chapter 12, Section 1(a)(vii)(E) by including a reference to its statutes at W.S. § 16-3-101 through 16-3-115 of the Wyoming Administrative Procedure Act concerning administrative (contested case) and judicial review. Wyoming’s reference to its statutes pertaining to administrative and judicial review in place of the corresponding Federal requirements does not render proposed subsection (E) less effective than the Federal regulations at 30 CFR 761.16(f). For these reasons, Wyoming’s proposed rule change satisfies Item G-1 of the April 2, 2001, 732 letter and we approve it.

B. Revisions to Wyoming’s Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Chapter 1, Section 2(f); Definition of “Valid Existing Rights.”

Item B-1 of OSM’s April 2, 2001, 732 letter required Wyoming to revise its definition of VER at Chapter 1, Section 2(f) by adding an explanation of the operation of VER. In response, Wyoming proposed to revise its rules at Chapter 1, Section 2(f) in a previous rulemaking action (WY-040-FOR) by adding a basic conceptual definition of VER and noting that operations on prohibited or limited areas under VER are still subject to the remainder of SMCRA regulations. OSM subsequently disapproved the revised VER definition at Chapter 1, Section 2(f) in a February 14, 2013, **Federal Register** notice (78 FR 10512, 10517) because Wyoming did not include Federal counterpart language stating that “Possession of valid existing rights only confers an exception from the prohibitions of § 761.11 and 30 U.S.C. 1272(e).” Consequently, we required Wyoming to add the “exception” language to its proposed definition of VER.

In response to the February 14, 2013, disapproval, Wyoming proposed to revise its rules at Chapter 1, Section 2(f) by specifying that “Possession of valid existing rights only confers an exception from the prohibitions of 30 CFR 761.11 and Section 522(e) of P.L. 98-87.”

Unfortunately, the proposed language referencing SMCRA contains an incorrect citation wherein “P.L. 98-87” is referenced rather than “P.L. 95-87.” For this reason, we are not approving Wyoming’s proposed rule revision.

2. Chapter 12, Section 1(a)(vii)(F); Availability of records.

Item G-4 of OSM’s April 2, 2001, 732 letter required Wyoming to submit counterpart provisions to 30 CFR 761.16(g) regarding availability of records requirements. In response, Wyoming proposed to revise its rules at Chapter 12, Section 1(a)(vii)(F) in a previous rulemaking action (WY-040-FOR) by requiring that the Division or agency responsible for processing a VER request shall make a copy of the request and related materials available to the public. OSM subsequently disapproved proposed subsection (F) in a February 14, 2013, **Federal Register** notice (78 FR 10512, 10517) because Wyoming did not specify in the heading that the rule pertains to “Availability of records” and did not provide counterpart language to the Federal requirements in 30 CFR 761.16(g) explaining that, in addition to the VER request and related materials, records associated with any subsequent

VER determination shall also be made available to the public. As a result, we required Wyoming to revise its proposed rule language at Chapter 12, Section 1(a)(vii)(F) by making the aforementioned changes.

In response to the February 14, 2013, disapproval, Wyoming proposed to revise its rules at Chapter 12, Section 1(a)(vii)(F) by specifying that the rule pertains to "Availability of records." In addition, Wyoming proposed language explaining that, in addition to the VER request and related materials, records associated with any subsequent VER determination under subsection (D) of its rules shall be made available to the public in accordance with the requirements and procedures of W.S. § 35–11–1101.

OSM replied in a letter dated June 24, 2013, that 30 CFR 761.16(g) requires the agency responsible for processing VER determination requests to make a copy of the request available to the public in the same manner as it makes permit applications available under 30 CFR 773.6(d). The responsible agency must also make records associated with the VER request and any subsequent determination available to the public in accordance with the requirements and procedures of 30 CFR 840.14.

Wyoming's proposed rule language requires the Division to make a copy of a VER request and related materials available to the public in the same manner as public availability of permit applications under its rules and regulations. Wyoming's regulatory counterpart to 30 CFR 773.6(d)(1) regarding public availability of permit applications is found at Chapter 12, Section 1(b) and requires, in pertinent part, that all procedural requirements of the Act and the regulations relating to review, public participation, and approval or disapproval of permit applications, and permit term and conditions shall, unless otherwise provided, apply to permit revisions, amendments, renewals and permit transfer, assignment or sale of permit rights.

Wyoming's statutory provisions regarding availability of records to the public and confidentiality are found at W.S. § 35–11–1101(a) and (b) of the Wyoming Environmental Quality Act. Subsection (a) holds that any records, reports or information obtained under the Wyoming Environmental Quality Act or the rules, regulations and standards promulgated thereunder are available to the public, unless a satisfactory showing is made to the director by any person that his records, reports or information or particular parts thereof would divulge trade

secrets if made public. If such a showing is satisfactory, the director and administrators shall consider the records, reports or information or particular portions thereof confidential in the administration of the Act. Subsection (b) states that nothing shall be construed to prevent disclosure of any records, reports or information to Federal, state or local agencies necessary for the purposes of administration of any Federal, state or local air, water or land control measures or regulations or when relevant to any proceedings under the act.

While W.S. § 35–11–1101 meets some of the requirements of 30 CFR 840.14, it fails to satisfy all of them. In particular, 30 CFR 840.14(b) specifies that the regulatory authority shall make copies of all records immediately available to the public in the area of mining until at least five years after the expiration of the period during which the operation is active or is covered by any portion of a reclamation bond. Since W.S. § 35–11–1101 fails to include a similar provision, we found that Wyoming's reference to the statute does not satisfy the requirements of 30 CFR 840.14 as referenced in 30 CFR 761.16(g) and newly-proposed subsection (F) remains less effective than the Federal regulations.

Wyoming responded in a letter dated August 5, 2013, by stating its belief that the current record retention requirements and public records acts for the State may already satisfy the public availability requirements of 30 CFR 840.14(b). As a result, Wyoming stated that the LQD will examine other statutory requirements and records retention requirements for the agency, and will provide the results of that examination to OSM in order to discuss whether the requested revision is still necessary in light of the information provided. Wyoming concluded by noting that if it is determined that the rules are still deficient the LQD will draft rules to address OSM's concern.

For the reasons discussed above, we are not approving Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(vii)(F) concerning requirements for making VER requests and related materials available to the public. We also acknowledge Wyoming's desire to examine other statutory and records retention requirements to determine compliance with 30 CFR 840.14(b), and its commitment to revise its rules and address OSM's concerns in a future rulemaking effort if required as a result of that examination.

3. Chapter 16, Section 4(c)(i); Amount of Civil Penalty.

In a November 7, 1988, 732 letter, OSM notified Wyoming that its rules concerning individual civil penalties were deficient. In a previous rulemaking action (WY–040–FOR), Wyoming proposed new rules at Chapter 16, Section 4(c)(i) imposing criteria that shall be considered when determining the amount of the individual civil penalty to be assessed. Proposed subsection (A) requires the Director to consider the "individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface mining operation." OSM subsequently disapproved proposed subsection (A) in a February 14, 2013, **Federal Register** notice (78 FR 10512, 10518) because the Federal counterpart provision at 30 CFR 846.14(a)(1), as well as the remainder of Wyoming's rules refer to "surface coal mining operations." As a result, we required Wyoming to revise its proposed rule language at Chapter 16, Section 4(c)(i)(A) to include the term "coal."

Unfortunately, Wyoming did not address this disapproval in its January 4, 2013, amendment and we notified Wyoming in a letter dated June 24, 2013, that our original decision remains outstanding.

Wyoming responded in a letter dated August 5, 2013, by stating that it will revise its proposed rule language at Section 4(c)(i)(A) to read "surface coal mining operations."

Accordingly, we are not approving Wyoming's newly-proposed rule at Chapter 16, Section 4(c)(i)(A) imposing criteria that shall be considered when determining the amount of an individual civil penalty to be assessed. We also acknowledge Wyoming's commitment to revise the rule to address the required change discussed above in a future rulemaking effort.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. OSM–2013–0001–0001), 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–49–03). We received comments from two Federal Agencies.

The United States Forest Service (USFS) commented in a February 27,

2013, email response (Administrative Record Document ID No. OSM–2013–0001–0008), and the Mine Safety and Health Administration (MSHA) commented in a March 1, 2013, letter (Administrative Record Document ID No. OSM–2013–0001–0009).

The USFS responded that its comment is reflective of its role as a Federal land managing agency in the coal permitting process. The USFS then stated its support for the clarification in the formal amendment on using variable topsoil depths to facilitate species diversity during reclamation.

MSHA responded that it reviewed the proposed changes in the formal amendment, concurs with the proposed revisions, and had no further comment.

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–49–03). 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 January 31, 2013, we requested comments on Wyoming's amendment (Administrative Record Nos. WY–49–04 and WY–49–05), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve, with certain exceptions, Wyoming's January 4, 2013, amendment. We do not approve the following provisions or parts of provisions.

As discussed in Finding No. III.B.1, we are not approving Wyoming's revised VER definition at Chapter 1, Section 2(f).

As discussed in Finding No. III.B.2, we are not approving Wyoming's newly-proposed rule at Chapter 12, Section 1(a)(vii)(F) concerning requirements for making VER requests and related materials available to the public.

As discussed in Finding No. III.B.3, we are not approving Wyoming's newly-proposed rule at Chapter 16, Section

4(c)(i)(A) imposing criteria that shall be considered when determining the amount of the individual civil penalty to be assessed.

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.

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 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 29, 2014.

Allen D. Klein,

Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 950 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
* January 4, 2013	* March 31, 2014	* Chap. 1, Sec. 2(f)(ii) (B)(IV); Chap. 1, Sec. 2(f)(iii); Chap. 12, Sec. 1(a)(v)(D); Chap. 12, Sec. 1(a)(vii)(A)(I); Chap. 12, Sec. 1(a)(vii)(A)(IV); Chap. 12, Sec. 1(a)(vii)(B)(I); Chap. 12, Sec. 1(a)(vii)(B)(IV); Chap. 12, Sec. 1(a)(vii)(C)(I)(3.) (a)–(d); Chap. 12, Sec. 1(a)(vii)(C)(II)(2.); Chap. 12, Sec. 1(a)(vii)(C)(III); Chap. 12, Sec. 1(a)(vii)(D)(I); Chap. 12, Sec. 1(a)(vii)(D)(III)(1.) and (2.); Chap. 12, Sec. 1(a)(vii)(E); Chap. 12, Sec. 1(a)(vii)(G)(III)(2.); Chap. 16, Sec. 4(a)(iii); Chap. 16, Sec. 4(b)(i);

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DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG–2014–0086]

Safety Zone; San Francisco Giants Fireworks, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the San Francisco Giants Fireworks display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191, Table 1, Item number 1 will be enforced from 11 a.m. to 10:30 p.m. on April 11, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at D11-PF-MarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones established in 33 CFR 165.1191, Table 1, Item number 1 on April 11, 2014. From 11 a.m. until 10 p.m. on April 11, 2014 the safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the fireworks barge at the launch site and until the start of the fireworks display. From 11 a.m. until 8:30 p.m. on April 11, 2014 the fireworks barge will be