

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 950**

[SATS No. WY-034-FOR]

**Wyoming Regulatory Program****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes revisions to and additions of rules about bond release (Rule Package 1-P) and highwall retention (Rule Package 1-T). Wyoming intends to revise its program to be consistent with the corresponding Federal regulations, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.s.t. March 15, 2006. If requested, we will hold a public hearing on the amendment on March 10, 2006. We will accept requests to speak until 4 p.m., m.s.t. on February 28, 2006.

**ADDRESSES:** You may submit comments, identified by "SATS No. WY-034-FOR" by any of the following methods:

- E-mail: [RBuckley@osmre.gov](mailto:RBuckley@osmre.gov). Include "SATS No. WY-034-FOR" in the subject line of the message.
- Mail/Hand Delivery/Courier: Richard W. Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018, Casper, Wyoming 82601-1018. 307/261-6550. [RBuckley@osmre.gov](mailto:RBuckley@osmre.gov).
- Fax: 307/261-6552.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and SATS No. WY-034-FOR. For detailed instructions on submitting comments

and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** Access to the docket, to review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Richard W. Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018, Casper, Wyoming 82601-1018. 307/261-6550. E-mail: [RBuckley@osmre.gov](mailto:RBuckley@osmre.gov).

John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002. 307/777-7046. E-mail: [jcorra@state.wy.us](mailto:jcorra@state.wy.us).

**FOR FURTHER INFORMATION CONTACT:** Richard Buckley, Telephone: 307/261-6550; E-mail: [RBuckley@osmre.gov](mailto:RBuckley@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Wyoming Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. 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 950.11, 950.12, 950.15, 950.16, and 950.20.

**II. Description of the Proposed Amendment**

By letter dated October 24, 2005, Wyoming sent us a proposed amendment to its program (administrative record No. WY-39-1) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment to reflect changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

The provisions of Wyoming's Rules that Wyoming proposes to revise are:

**Bond Release**

Chapter 4, section 2(d)(ix), section 2(d)(x), section 2(d)(x)(E)(I) & (II), section 2(d)(ix)(E)(III) & (IV), and (F), section 2(d)(x)(J), and section 2(d)(xiv)

Chapter 15, section 1(a), section (b), Appendix A, subsection III.A, subsection VII.E, subsection VIII.A, subsection VIII.F; and

**Highwall Retention**

Chapter 4, subsections 2(b)(iv)(C)(1), (2), (3), (4), (5) & (6); and (iv)(D)

Specifically, Wyoming proposes to make the following additions or revisions to its rules:

**Bond Release**

Revise Chapter 4, section 2(d)(ix) to reflect the name change of the Soil Conservation Service to the Natural Resource Conservation Service.

Revise Chapter 4, section 2(d)(x) to remove the Grazing Demonstration in Wyoming's regulations that OSM has removed from its regulations and to develop a Vegetation Technical Standard for bond release evaluations.

Revise Chapter 4, section 2(d)(x)(E)(I) & (II) to reinstate the shrub goal rule for the postmining land use of grazingland and wildlife and to clarify that this is to be applied from May 3, 1978 to August 6, 1996.

Revise Chapter 4, section 2(d)(x)(E)(III), (E)(IV), & (F) to reflect the actual intent of the Federal regulations concerning the density of trees to be the number of trees on the affected lands rather than the number per unit area, and to change the section number.

Revise Chapter 4, section 2(d)(x)(J) to allow for an alternate method to evaluate revegetation success at the time of bond release, specifically, the development of technical standards for cover and production.

Revise Chapter 4, section 2(d)(xiv) to remove the language on controlling noxious weeds from five years to “until bond release”.

Revise Chapter 15, section 1(a), the introductory paragraph, to ask that technical evaluations be done throughout the reclamation process and prior to bond release, and to allow the public an opportunity to be involved in the final decision-making process.

Revise Chapter 15, section 1(b)(vi) to alleviate a program deficiency identified in a 30 CFR 732.17 letter dated June 19, 1997, relating to the Federal requirement for a notarized statement as part of the bond release package. Section 1(d) is being proposed for revision to add the requirement that the publisher’s affidavit and a copy of the notice be submitted to the Administrator (of the Wyoming Land Quality Division). Section 1(e)(iii) is proposed for elimination since it refers to the now nonexistent Wyoming Economic Development and Stabilization Board.

Revise Appendix A, subsection III.A to update it to reflect the previously-mentioned rule changes.

Revise Appendix A, subsection VII.E to reflect the removal of grazing as a bond release criteria.

Revise Appendix A, subsection VIII.A to reflect the removal of grazing as a bond release criteria and to attainment of the standards for two out of four years for those mines using a technical standard.

Revise Appendix A, subsection VIII.F to reflect the removal of grazing as a bond release criteria, although grazing as a husbandry practice is still encouraged.

### *Highwall Retention*

Revise Chapter 4, section 2(b)(iv)(C), and delete (D), to add provisions on replacement features, static safety factor, hazard elimination, cover depth, contour with surrounding terrain, wildlife habitat and hydrologic conditions to be similar to those of New Mexico and Utah.

### **III. Public Comment Procedures**

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

#### *Written Comments*

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues

proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your written comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

#### *Electronic Comments*

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include “Attn: SATS No. WY-034-FOR” and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261-6550. In the final rulemaking, we will not consider or include in the administrative record any electronic comments received after the time indicated under **DATES** or at e-addresses other than the Casper Field Office.

#### *Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on February 28, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy

of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### **IV. 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. 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*

No environmental impact statement is required for this rule since agency decisions on proposed State regulatory program plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

*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: December 6, 2005.

**Allen D. Klein,**

*Regional Director, Western Region.*

[FR Doc. E6–1988 Filed 2–10–06; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[OAR–2002–0088, FRL–8008–3]

RIN 2060–AM90

**National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; amendments.

**SUMMARY:** The EPA is proposing amendments to the national emission standards for hazardous air pollutants (NESHAP) for new and existing refractory products manufacturing facilities, which were promulgated on April 16, 2003, under section 112(d) of the Clean Air Act (CAA). The proposed amendments would clarify testing and monitoring requirements, reflect recent changes to the NESHAP General Provisions, clarify startup and shutdown for batch processes, and make certain technical corrections to the final rule.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view the amendments as noncontroversial and anticipate no adverse comments. We have explained our reasons for the revisions in the preamble to the direct final rule. If we receive no adverse comments, we will take no further action on the proposed amendments. If we receive adverse comment on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** indicating which amendments in the direct final rule will become effective and which amendments are being withdrawn due to adverse comment. If part or all of the direct final rule in the Rules and Regulations section of this **Federal Register** is withdrawn, all comments pertaining to the amendments will be addressed in a subsequent final rule based on the proposed amendments. We will not institute a second comment period on the subsequent final rule. Any