

Surface Mining Reclamation and Enforcement, Interior

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§ 950.20 State-Federal Cooperative Agreement.

The Governor of the State of Wyoming (State) acting by and through the Department of Environmental Quality, Land Quality Division (Division), and the Secretary of the Department of the Interior (Department) acting by and through the Office of Surface Mining Reclamation and Enforcement (OSMRE), enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION AND PURPOSE

1. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter an Agreement with the Secretary for the regulation and control of surface coal mining and reclamation operations on Federal lands.

This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR parts 3480 through 3487 and surface coal mining and reclamation operations in Wyoming subject to the Federal lands program (30 CFR parts 740 through 746) consistent with the Act, the Wyoming Environmental Quality Act (W.S. 35-11-401-437), and the Wyoming State Program (Program).

2. The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR parts 3480 through 3487; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program in Wyoming, in accordance with the Act.

ARTICLE II: EFFECTIVE DATE

3. This Agreement shall take effect following signing by the Secretary and the Governor, and thirty days after publication as a final rule in the FEDERAL REGISTER. This Agreement shall remain in effect until terminated as provided in Article X.

ARTICLE III: SCOPE

4. In accordance with the Federal lands regulations in 30 CFR parts 740 through 746, the laws, regulations, terms and conditions of the Wyoming State Program, as approved or as amended in accordance with 30 CFR part 732, are applicable to lands in Wyoming subject to the Federal lands program except as otherwise stated in this Agreement, the

Act, 30 CFR part 745, or other applicable laws or regulations. Orders and decisions issued by the State in accordance with the Program that are appealable shall be appealed as provided for by State law. Orders and decisions issued by the Department that are administratively appealable shall be appealed to the Department's Office of Hearings and Appeals.

ARTICLE IV: REQUIREMENTS FOR THE AGREEMENT.

5. The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

(a) *Responsible Administrative Agency.* The Division shall be responsible for administering this Agreement on behalf of the Governor. OSMRE shall administer this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

(b) *Authority of State.* The State has and shall continue to have authority under State law to carry out this Agreement.

(c) *Funds.* The State will devote adequate funds to the administration and enforcement on Federal lands in the State of the requirements contained in the Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, the Department shall reimburse the State as provided in section 705(c) of the Act, the grant agreement, and 30 CFR 735.16 for costs associated with carrying out responsibilities under this Agreement. Reimbursements shall be in the form of annual grants and grant amendments, and applications for said grants shall be processed and awarded in a timely and prompt manner. If sufficient funds have not been appropriated to OSMRE or the State, the parties shall promptly meet to decide on appropriate measures that will ensure that surface coal mining and reclamation operations and exploration operations on Federal lands are regulated in accordance with the Program. If agreement cannot be reached, then either party may terminate the Agreement.

(d) *Reports and Records.* The State shall make annual reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, the State and OSMRE shall exchange (except where prohibited by Federal law) information developed under this Agreement. OSMRE shall provide the State with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

(e) *Personnel.* The State shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act and the Program.

(f) *Equipment and Laboratories.* The State shall have access to equipment, laboratories,

and facilities with which all inspections, investigations, studies, tests and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

(g) *Permit Application Fees.* The amount of the fee accompanying an application for a permit shall be determined in accordance with W.S. 35-11-406(a)(xii). All permit fees shall be retained by the State and deposited with the State Treasurer in the General Fund. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations and OMB Circular No. A-102, Attachment E.

ARTICLE V: POLICIES AND PROCEDURES:
PERMIT APPLICATION PACKAGE REVIEW

6. The State and OSMRE agree and hereby require that an applicant proposing to conduct surface coal mining operations on lands subject to the Federal lands program shall submit a permit application package (PAP) in an appropriate number of copies to the State and OSMRE. If any material is submitted to the State by an applicant for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, the State will forward such material through OSMRE to the Bureau of Land Management (BLM). If the material is submitted as part of the PAP, a copy of the entire package will be sent through OSMRE to BLM. The PAP shall be in the form required by the State, and shall include any supplemental information required by OSMRE. The PAP shall include the information required by, or necessary for, the State and the Secretary to make a determination of compliance with:

- (a) W.S. 35-11-406(a) and (b) (1980);
- (b) Chapter II, Land Quality Division Rules and Regulations, Department of Environmental Quality, or other chapters where these may supersede Chapter II;
- (c) Applicable terms and conditions of the Federal coal lease; and
- (d) Applicable requirements of the Program, and other Federal laws and regulations, including, but not limited to those listed in Appendix A.

7. a. *State Responsibility.* The State shall assume primary responsibility for the analysis, review, and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations on lands subject to the Federal lands program.

b. *OSMRE Responsibility.* (1) OSMRE will, at the request of the State, assist the State in its analysis and review of the PAP. (2) The Department shall concurrently carry out its responsibilities which cannot be delegated to

the State under the Act, the Mineral Leasing Act (MLA), as amended, the National Environmental Policy Act (NEPA), and other applicable Federal laws (including but not limited to these in Appendix A). The Department shall carry out those responsibilities in accordance with the Federal lands program and this Agreement in a timely manner so as to eliminate, to the maximum extent possible, duplication of the responsibilities of the State set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by the Act, MLA, NEPA, and other Federal laws.

c. *Responsibility for Handling Other Federal Laws.* The State must consider the comments of Federal agencies in the context of permit issuance and will document these comments in the record of permit decisions. Permits issued by the State shall include, to the extent allowed by Wyoming law, terms and conditions required by the lease issued pursuant to the Mineral Leasing Act and by other applicable Federal laws and regulations in accordance with 30 CFR 740.13(c)(1). When Federal agencies recommend permit conditions and these conditions are not adopted, the State will provide OSMRE with documentation as to why they were not incorporated as permit conditions.

Upon notification from the State that certain permit conditions are not incorporated, OSMRE will determine whether such conditions are necessary and may be attached to other Federal authorizations. If not other Federal authorizations are required, then OSMRE may issue a supplemental SMCRA permit attaching only those conditions which are necessary to assure compliance with other Federal laws. The State shall not be required to enforce the conditions of the Federal permit.

d. *Working Agreements.* Responsibilities and decisions which can and cannot be delegated to the State under the Act and other applicable Federal laws may be specified in working agreements between OSMRE and the State with the concurrence of any Federal agency involved, and without amendment to this Agreement.

8. The State will be the primary point of contact for applicants regarding the review of the PAP, except on matters concerned exclusively with the regulations in 43 CFR parts 3480-3487 administered by the BLM and on matters unrelated to the review of the PAP. The State will be responsible for informing the applicant of any joint State-Federal determinations. The State shall send to OSMRE copies of any correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the PAP. OSMRE would not independently initiate contacts with applicants regarding completeness or

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deficiencies of the PAP with respect to matters covered by the Program; however, the Department reserves the right to act independently of the State to carry out its responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program. OSMRE shall send to the State copies of all independent correspondence with the applicant which may have a bearing on decisions regarding the PAP.

9. The State shall assume the responsibilities listed in 30 CFR 740.4(c)(1), (4), (5), (6), and (7). OSMRE will retain the responsibilities listed in 30 CFR 740.4(c)(2), (3) and the exceptions in 30 CFR 740.4(c)(7)(i)-(vii). In addition to the procedures outlined in paragraphs 9, 10, and 11, OSMRE shall assist the State in carrying out its responsibilities by:

(a) Distributing copies of the PAP to, and coordinating the review of the PAP among all Federal agencies which have responsibilities relating to decisions on the package. This shall be done in a manner which ensures timely identification, communication and resolution of issues relating to those Federal agencies' statutory requirements. OSMRE shall request that such other Federal agencies furnish their findings or any requests for additional data to OSMRE within 45 calendar days of the date OSMRE transmits to them a copy of the PAP.

(b) Providing the State with the analyses and conclusions of other Federal agencies regarding those portions of the PAP which affect their statutory responsibilities.

(c) Resolving conflicts and difficulties between or among other Federal agencies in a timely manner.

(d) Assisting in scheduling joint meetings as necessary between State and Federal agencies.

(e) Where OSMRE is assisting the State in reviewing the permit application, furnishing the State with the work product within 45 calendar days of receipt of the State's request for such assistance, or earlier if mutually agreed upon by OSMRE and the State.

(f) Exercising its responsibilities in a timely manner as set forth in a mutually agreed upon schedule, governed to the extent possible by the deadlines established in the Program.

(g) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

10. This paragraph describes the procedures that OSMRE and the State will follow in the review of a PAP for surface coal mining and reclamation operations where a mining plan is required under the Mineral Leasing Act:

(a) OSMRE and the State shall coordinate with each other during the review process as needed. The State shall keep OSMRE informed of findings made during the review process which bear on the responsibilities of

OSMRE and other Federal agencies. OSMRE shall ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to the State.

(b) The State shall review the PAP for compliance with the Program and State laws and regulations.

(c) OSMRE shall review the appropriate portions of the PAP for compliance with the non-delegable responsibilities of the Act and the requirements of other Federal laws and regulations consistent with paragraphs 7 and 8 of this Agreement.

(d) OSMRE and the State shall develop a work plan and schedule for PAP review and each shall identify a person as project leader. The State and OSMRE project leaders shall serve as the primary point of contact between OSMRE and the State throughout the review process. Not later than 50 days after receipt, OSMRE shall furnish the State with its preliminary findings and specify any requirements for additional data. OSMRE shall advise the State on the need for it to perform any work as part of the preparation of an Environmental Impact Statement as soon as possible in the review process.

(e) The State shall prepare a State decision package on the PAP. To the fullest extent allowed by the State and Federal law and regulations, the State and OSMRE will cooperate so that duplication will be eliminated in conducting the technical analyses and meeting NEPA requirements for the proposed mining operation. Copies of the draft State decision package shall be sent to OSMRE for review and comment. OSMRE shall evaluate the package and inform the State within 30 days, whenever possible, of any changes that should be made. The State shall consider these comments and send a final State decision package to OSMRE for action in a timely manner consistent with the Federal lands program. OSMRE shall have 30 days after receipt to request any changes to the State's final decision package.

(f) The State may proceed to issue the permit in accordance with the Program prior to the necessary Secretarial approval, provided that the State advises the permittee in the permit of the necessity for Secretarial approval of a mining plan prior to beginning operations to mine Federal coal. The State shall reserve the right to amend or rescind any requirements of the approved permit to conform with any terms or conditions imposed by the Secretary in his approval of the mining plan.

11. This paragraph describes the procedures that the State and OSMRE will follow in processing a PAP for surface coal mining and reclamation operations which does not require Secretarial approval of a mining plan under the Mineral Leasing Act:

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(a) Upon receipt of a PAP for such operations, OSMRE shall consult with and obtain the determinations or conditions of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. To the extent possible, these determinations and conditions and any determinations required by OSMRE pursuant to section 522 of the Act, shall be forwarded to the State within the time frame allowed by State law for processing permit applications.

(b) The State shall review the PAP for compliance with the Program and State laws and regulations.

(c) The State may proceed to issue the permit.

(d) After issuing the permit, the State shall send OSMRE and the Federal land management agency a copy of the signed permit form and State decision package.

12. The following procedures will be used in processing permit revisions or renewals:

(a) Any permit revision or renewal for operations on lands subject to the Federal lands program shall be reviewed and approved or disapproved by the State after consultation with OSMRE on whether the revision or renewal constitutes a mining plan modification under 30 CFR 746.18. OSMRE shall inform the State within 30 days of receiving a copy of a proposed revision or renewal, whether it constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and the State will follow the procedures outlined in paragraph 10 of this Article.

(b) Permit revisions or renewals for operations not constituting a mining plan modification and not meeting the criteria that may be established under (c) of this paragraph shall be reviewed and approved or disapproved following the procedures outlined in paragraph 11 of this Article.

(c) OSMRE may establish criteria to determine which types of permit revisions and renewals do not constitute mining plan modifications and will not affect the non-delegable responsibilities of OSMRE and other Federal agencies. Revisions or renewals meeting such criteria may be approved by the State prior to informing OSMRE of the approval and submission of copies of the revision or renewal to OSMRE.

ARTICLE VI: INSPECTIONS

13. The State shall conduct inspections on lands subject to the Federal lands program and prepare and file inspection reports in accordance with the Program.

14. The State shall, subsequent to conducting any inspection, and on a timely basis, file with the Secretary an inspection report adequately describing (1) the general conditions of the lands under the permit and license; (2) the manner in which the operations are being conducted; and (3) whether

the operator is complying with applicable performance and reclamation requirements.

15. The State will be the point of contact and the inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR part 842 and 30 CFR 843.12(a)(2) and its obligations under laws other than the Act.

16. OSMRE shall give the State reasonable notice of its intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When the Department is responding to a citizen complaint of an imminent environmental danger or a threat to human health pursuant to 30 CFR part 842.11(b)(1)(ii)(C), it will contact the State no less than 24 hours if practicable, prior to the Federal inspection to facilitate a joint Federal/State inspection. The Secretary reserves the right to conduct inspections without prior notice to the State as necessary to carry out his responsibilities under the Act.

17. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

ARTICLE VII: ENFORCEMENT

18. The State shall have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program.

19. During any joint inspection by the Department and the State, the State shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The Department and the State shall consult prior to issuance of any decision to suspend or revoke a permit.

20. During any inspection made solely by the Department or any joint inspection where the State and the Department fail to agree regarding the propriety of any particular enforcement action, the Department may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the standards in the Program, the Act, the permit, or all three, and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

21. The State and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining plans and permits subject to this Agreement, and of all actions taken with respect to such violations.

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22. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

ARTICLE VIII: BONDS

23. The State and the Secretary shall require each operator on lands subject to the Federal lands program to submit a single performance bond payable to both the United States and the State of Wyoming that is sufficient to cover the operator's responsibilities under the Act and the program. Such performance bond shall be conditioned upon compliance with requirements of the Program, the Act and the permit. Such bond shall provide that if this Agreement is terminated, the bond shall be payable only to the United States to the extent that lands covered by the Federal lands program are involved.

24. Prior to releasing the operator from any obligation under a bond required by the Program on lands subject to the Federal lands program, the State shall obtain the concurrence of the Department. Departmental concurrence shall be based on field measurements, observations, and coordination with other Federal agencies having authority over the affected lands. The State shall also advise the Department annually of adjustments to the bond pursuant to the Program.

25. Performance bonds shall be subject to forfeiture, with the concurrence of the Department, in accordance with the procedures and requirements of the Program.

ARTICLE IX: DESIGNATION OF LAND AREAS AS UNSUITABLE

26. The State and OSMRE shall cooperate with each other in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition that could impact adjacent Federal or non-Federal lands, the agency receiving the petition shall (1) notify the other of receipt and of the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other.

27. The authority to designate State and private lands as unsuitable for mining is reserved to the State. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

28. This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

29. If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XII: AMENDMENTS OF COOPERATIVE AGREEMENT

30. This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

31. The Department or the State may promulgate new or revised performance or reclamation requirements or administration and enforcement procedures. OSMRE and the State shall immediately inform each other of any final changes and of any effect such changes may have on this Agreement. If it is determined to be necessary to keep this Agreement in force, the State shall take legislative action and each party shall change or revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the Program and sections 501 and 523 of the Act for changes to the Federal lands program.

32. The State and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

33. The State and the Department shall, consistent with 30 CFR part 745, advise each other of changes in organization, structure, functions, duties and funds of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in key personnel, including the heads of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the Program. The State and the Department shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, locations and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

ARTICLE XV: RESERVATION OF RIGHTS

34. In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in

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this Agreement, that the State or the Secretary may have under other laws or regulations, including the Surface Mining Control and Reclamation Act of 1977, the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Stockraising Homestead Act, the Federal Land Policy and Management Act, other Federal laws including but not limited to those listed in Appendix A, the Constitution of the United States, and the Constitution of the State or State laws.

ARTICLE XVI: DEFINITIONS

35. Terms and phrases used in this Agreement which are defined in 30 CFR Parts 700, 701 and 740, or the Program shall be given the meanings set forth in said definitions. Where there is a conflict between any definitions, the definitions used in the Program will apply except in the case of a term which conflicts with the Secretary's remaining responsibilities under the Act and other laws.

APPENDIX A

- (1) Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.*, and implementing regulations.
- (2) The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
- (3) The Mineral Leasing Act of 1920, 30 U.S.C. *et seq.*, and implementing regulations including 43 CFR part 3480 *et seq.*
- (4) The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. 351 *et seq.*, and implementing regulations.
- (5) The National Environmental Policy Act of 1969, 42 U.S.C. 4312 *et seq.*, and implementing regulations including 40 CFR part 1500 *et seq.*
- (6) The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR part 402.
- (7) The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations including 36 CFR part 800 and Executive Order 11593 (May 13, 1971).
- (8) The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
- (9) The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
- (10) The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

- (11) The Reservoir Salvage Act of 1960, amended by the Preservation and Historical and Archeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
- (12) Executive Order 11988 (May 24, 1977) for floodplain protection. Executive Order 11990 (May 24, 1977) for wetland protections.
- (13) The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661-667.
- (14) The Bald and Golden Eagle Protection Act of 1940, as amended, 16 U.S.C. 668-668d, and implementing regulations.
- (16) The Migratory Bird Treaty Act, as amended, 16 U.S.C. 701-718h.

[51 FR 45089, Dec. 16, 1986]

§ 950.30 Approval of Wyoming abandoned mine land reclamation plan.

The Wyoming Abandoned Mine Land Reclamation Plan, as submitted on August 16, 1982, and as subsequently revised, is approved effective February 14, 1983. Copies of the approved program are available at:

- Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601-1918.
- State of Wyoming, Department of Environmental Quality, Abandoned Mine Lands Division, Herschler Building, Third Floor West, 122 West 25th Street, Cheyenne, WY 82002.

[57 FR 12733, Apr. 13, 1992]

§ 950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

- (a) Wyoming certification of completing all known coal-related impacts is accepted, effective May 25, 1984.
- (b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
December 16, 1991 ..	April 13, 1992	W.S. 35-11-1201 through 1304; Chs I through VIII of State's AML rules.
April 21, 1995	February 21, 1996 ..	W.S. 35-11-1206(a), (b); -1209(a), (b).
September 1, 2005 ...	March 23, 2006	W.S. 35-11-1206(a). W.S. 35-11-1206(b). W.S. 35-11-1209. W.S. 35-11-1209(vii).
March 21, 2008	October 3, 2008	W.S. 35-11-1210(b)