

application for the IRS individual taxpayer identification number.

* * * * *

(f) *Penalty.* For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724.

(g) *Special rules for taxpayer identifying numbers issued to foreign persons—(1) General rule—(i) Social security number.* A social security number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. citizen or resident alien individual. A person may establish a different status for the number by providing proof of foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. Upon accepting an individual as a nonresident alien individual, the Internal Revenue Service will assign this status to the individual's social security number.

(ii) *Employer identification number.* An employer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. person. However, the Internal Revenue Service may establish a separate class of employer identification numbers solely dedicated to foreign persons which will be identified as such in the records and database of the Internal Revenue Service. A person may establish a different status for the number either at the time of application or subsequently by providing proof of U.S. or foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. The Internal Revenue Service may require a person to apply for the type of employer identification number that reflects the status of that person as a U.S. or foreign person.

(iii) *IRS individual taxpayer identification number.* An IRS individual taxpayer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a nonresident alien individual. If the Internal Revenue Service determines at the time of application or subsequently, that an individual is not a nonresident alien individual, the Internal Revenue Service may require that the individual apply for a social security number. If a social security number is not available, the Internal Revenue Service may accept that the individual use an IRS individual taxpayer identification

number, which the Internal Revenue Service will identify as a number belonging to a U.S. resident alien.

(2) *Change of foreign status.* Once a taxpayer identifying number is identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. or foreign person, the status of the number is permanent until the circumstances of the taxpayer change. A taxpayer whose status changes (for example, a nonresident alien individual with a social security number becomes a U.S. resident alien) must notify the Internal Revenue Service of the change of status under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify.

(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number and change of foreign status.

(h) *Effective date—(1) General rule.* Except as otherwise provided in this paragraph (h), the provisions of this section are generally effective for information that must be furnished after April 15, 1974. However, the provisions relating to IRS individual taxpayer identification numbers apply after May 29, 1996. An application for an IRS individual taxpayer identification number (Form W-7) may be filed at any time on or after July 1, 1996.

(2) *Special rules—(i) Employer identification number of an estate.* The requirement under paragraph (a)(1)(ii)(C) of this section that an estate obtain an employer identification number applies on and after January 1, 1984.

(ii) *Taxpayer identifying numbers of certain foreign persons.* The requirement under paragraph (b)(2)(iv) of this section that certain foreign persons furnish a TIN on a return of tax is effective for tax returns filed after December 31, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, the table in paragraph (c) is amended by revising the entry for 301.6109-1 to read as follows:

301.6109-1	1545-0003
	1545-0295
	1545-0367
	1545-0387
	1545-0957
	1545-1461

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: May 20, 1996

Leslie Samuels,
Assistant Secretary of the Treasury.
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO-029-FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule; approval of amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Colorado regulatory program (hereinafter referred to as the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado proposed revisions to and additions of rules pertaining to Colorado's responsibility as regulatory authority for regulating surface coal mining and reclamation operations and coal exploration; definitions; commercial use or sale of coal extracted during coal exploration; public availability of information; right of entry and operation information; public notice and comment on permit applications; procedures for review of permit applications; criteria for permit approval or denial; permit conditions; permit revisions; allowance of self-bonds; terms and conditions for self-bonds; criteria and schedule for release of performance bonds; termination of jurisdiction; performance standards for signs and markers, haul and access roads, effluent standards for discharges

of water from areas disturbed by surface coal mining and reclamation operations, blasting, and coal mine waste returned to underground mine workings; inspection frequency at abandoned sites; inspections based upon citizen requests; enforcement actions at abandoned sites; and show cause orders and patterns of violations involving violations of water quality effluent standards. The amendment was intended to revise the Colorado program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672-5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated November 20, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO-675) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the proposed amendment at its own initiative; in partial response to May 7, 1986, and March 22, 1990, letters (administrative record No. CO-282 and CO-496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c); and in response to the requirement that Colorado amend its program at 30 CFR 906.16(a).

OSM announced receipt of the proposed amendment in the December 7, 1995, Federal Register (60 FR 62789), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. CO-675-2). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 8, 1996.

During its review of the amendment, OSM identified apparent typographical errors and a concern relating to the

regulatory authority's discretionary acceptance of self bonds. OSM notified Colorado of the typographical errors and concern by letter dated January 25, 1996 (administrative record No. CO-675-8). Colorado responded in a letter dated February 16, 1996, by submitting a revised amendment (administrative record No. CO-675-9).

Based upon the revisions to the proposed program amendment submitted by Colorado, OSM reopened the public comment period in the March 5, 1996, Federal Register (61 FR 8534; administrative record No. CO-675-10). The public comment period ended on March 20, 1996.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Colorado on November 20, 1995, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Colorado's Rules

Colorado proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial changes (corresponding Federal regulation provisions are listed in parentheses):

Rule 2.07.3(3)(a)(iii) (30 CFR 773.13(a)(2)), concerning the content of Colorado's written notice upon receipt of applications, to replace the word "submitted" with the word "inspected;"

Rule 2.07.7(1) (30 CFR 773.17), concerning permit conditions, to add "[t]he" prior to "permittee;"

Rule 2.08.6(2)(b)(iii) (30 CFR 774.17(b)(iii)), concerning transfer, assignment, or sale of permit rights, to delete an extraneous "or" at the end of the subsection; and

Rule 4.08.4(10) (30 CFR 816.67(d)(2)(i)), concerning the table showing the allowed maximum peak particle velocity in blasting operations, by replacing the signature for footnotes "1" and "2" with the symbol "†."

Because the proposed revisions to these previously-approved Colorado rules are nonsubstantive in nature, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Colorado's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Colorado proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the

requirements of the corresponding Federal regulation provisions (listed in parentheses).

Rule 1.04(1) (30 CFR 840.11(g) and 842.11(e)), concerning the definition of "Abandoned site;"

Rules 1.04 (31a), (31b), (47a), (71a) (76), (83b), (116) and (135a) (30 CFR 800.23(a)), concerning the respective definitions of "Current liabilities," "Fixed assets," "Liabilities," "Net worth," "Parent corporation," "Self-bond," and "Tangible net worth;"

Rule 1.04(92) (30 CFR 700.5), concerning the definition of "Person;"

Rule 2.02.7 (30 CFR 772.14), concerning the commercial use and sale of coal from exploration operations;

Rule 2.07.6(2) (30 CFR 773.15(c)), concerning findings that the State regulatory authority must make prior to approval of applications for permits and permit revisions;

Rules 2.07.7 (6), (7), and (8) (30 CFR 773.17 (a), (b), and (c)), concerning permit conditions;

Rule 2.08.6(4)(a) (30 CFR 774.17(d)(1)), concerning approval of transfer, assignment, or sale of permit rights;

Rules 3.02.4(1)(c) and 3.02.4(2)(e) (30 CFR 800.23 (b) through (f)), concerning the allowance of self-bonding and the conditions for approval of self-bonds;

Rules 3.03.3 (1) and (2) (30 CFR 700.11(d) (1) and (2)), concerning termination of jurisdiction;

Rule 4.11.3 (30 CFR 816.81(f)), concerning return of coal mine waste to underground mine workings;

Rule 5.02.2(4)(b) (30 CFR 840.11(f)(2)), concerning when the State regulatory authority can consider an operation an inactive surface coal mining and reclamation operation; and

Rules 5.03.2(1)(e) and 5.03.2(2)(h) (30 CFR 843.22), concerning enforcement procedures at abandoned sites;

Because these proposed Colorado rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. Rules 1.03.1(1)(a), 2.03.3(8), 2.07.3(2), 2.07.3(2) (e) and (f), 2.07.3(3)(a), 2.07.3(4)(a), 2.07.4(2), and 2.07.4(3) (b) and (c), Permit Applications, Public Notice Requirements, Permit Review and Decision, and Bonding Requirements Prior to Permit Issuance

a. Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2), Clarification of which permitting procedures apply to technical revisions, permit revisions, permits, or renewals of existing permits. Colorado proposed to revise Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2), concerning requirements for (1) the applicant's submission of applications,

(2) the applicant's and Colorado's responsibility for public notice, and (3) Colorado's review of and decisions on applications, to clarify which rules apply to technical revisions, permit revisions, new permits, or renewals of existing permits. The requirements of these rules have not otherwise been revised.

The respective counterpart Federal regulations at 30 CFR 701.4(a), 30 CFR 773.13(a)(1), 30 CFR 773.13(a)(3), and 30 CFR 773.15(a)(1) set forth the requirements concerning application submittal, public notice, and the regulatory authority's responsibility for review and decision for minor revisions, significant permit revisions, permits, and permit renewals.

Colorado's requirements for technical revisions correspond to the Federal requirements for minor revisions; Colorado's requirements for permits and permit revisions correspond to the Federal requirements for permits and significant permit revisions. Proposed Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2) clarify the scope of existing requirements in a manner that is consistent with and no less effective than the respective counterpart Federal regulations at 30 CFR 701.4(a), 30 CFR 773.13(a)(1), 30 CFR 773.13(a)(3), 30 CFR 773.15(a)(1). Therefore, the Director approves proposed Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2).

b. Rule 2.03.3(8), number of applications required to be submitted to the regulatory authority. Colorado proposed to revise Rule 2.03.3(8) to require that three, rather than five, copies of a permit application with original signatures be submitted to the State.

The Federal regulations at 30 CFR 740.13(b)(2) state that, unless specified otherwise by the regulatory authority, seven copies of the complete permit application package shall be filed with the regulatory authority.

Because Colorado has elected to specify the number of applications that must be submitted, Colorado's proposed Rule 2.03.3(8) is consistent with and no less effective than the Federal regulations at 30 CFR 740.13(b)(2). Therefore, the Director approves proposed Rule 2.03.3(8).

c. Rules 2.07.3(2) (e) and (f), Contents of public notices for operations affecting public roads. Colorado proposed to revise Rules 2.07.3(2) (e) and (f), concerning contents of public notices for operations in which the applicant proposes, respectively, (1) that affected areas would be within 100 feet, measured horizontally, of a public road and (2) to close or relocate a public

road. Colorado proposed to add to Rules 2.07.3(2) (e) and (f) the requirement that the published notices include—

A statement indicating that a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected may be requested by contacting the Division in writing within 30 days after the last publication of the notice.

The Federal regulations at 30 CFR 773.13(a)(1)(v) require that an applicant (for a permit, significant revision of a permit, or renewal of a permit), if seeking a permit to mine within 100 feet, measured horizontally, of the outside right-of-way of a public road or to relocate or close a public road, must place an advertisement in a local newspaper a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing. The Federal regulations at 30 CFR 761.12(d)(2) require, in such cases, that the regulatory authority or public road authority designated by the regulatory authority shall provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected.

The requirement that the applicant include in its public notice for a permit application the opportunity for a public hearing on the affect of mining on public roads, which Colorado proposes to add at Rules 2.07.3(2) (e) and (f), is consistent with and no less effective than the requirements in the Federal regulations at 30 CFR 773.13(a)(1) (v) and 761.12(d)(2). Therefore, the Director approves proposed Rules 2.07.3(2) (e) and (f).

d. Rules 2.07.4(3) (b) and (c), the requirement for performance bond approval prior to permit issuance. Colorado proposed to revise Rules 2.07.4(3) (b) and (c), concerning its decision on a permit application and the opportunity for public hearing, to clarify that no permit shall be issued until a performance bond has been submitted and approved.

The Federal regulations at (1) 30 CFR 773.15(d) require the regulatory authority, if it decides to approve a permit application, to require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued and (2) 30 CFR 800.11 (a) and (c) require that after a permit application is approved, but before any new area is disturbed, that the applicant submit and the regulatory

authority approve the required performance bond.

The requirement proposed by Colorado at Rules 2.07.4(3) (b) and (c), that no approved permit shall be issued until a performance bond has been submitted and approved, is no less effective than the requirements of the Federal regulations at 30 CFR 773.15(d) and 800.11 (a) and (c). Therefore, the Director approves proposed Rules 2.07.4(3) (b) and (c).

4. Rule 1.04(89), Definition of "Permit area"

Colorado proposed to revise the definition of "Permit area" at Rule 1.04(89) to (1) include the requirement that "the permit area be identified through a complete and detailed legal description, as required by Rule 2.03.6," and (2) delete the requirement that the area "shall be readily identifiable by appropriate markers on the site." Colorado stated that Rule 4.02.3 requires that only the perimeter of all areas affected by surface operations or facilities be identified by markers on site, and does not pertain to the extent of underground operations.

The Federal definition of "Permit area" at 30 CFR 701.5 does not include the requirement for a legal description. The requirement in Colorado's proposed definition of "Permit area" for identification by legal description would ensure the identification of the extent of both surface and underground coal mining and reclamation operations.

Therefore, the Director finds that Colorado's proposed definition of "Permit area" at Rule 1.04(89) is consistent with and no less effective than the Federal definition of "Permit area" at 30 CFR 701.5. The Director approves proposed Rule 1.04(89).

5. Rule 2.03.4(10), Permit Application Requirements Concerning Identification of Interests and Compliance Information

Colorado proposes, at Rule 2.03.4(10), to delete the requirement for "a form approved by the Board" on which an applicant would submit information required by 2.03.4 and by 2.03.5 (identification of interests and compliance information). The requirement that the required information be submitted in the permit application is otherwise unaltered.

The Federal regulation at 30 CFR 778.13(j) requires that information concerning identification of interests be submitted in any prescribed OSM format that is issued. The OSM format would be applicable only where OSM is the regulatory authority (RA). There is no requirement in the Federal regulation for a State RA to design a format.

Therefore, Colorado's proposed deletion of a required format for information at Rule 2.03.4(10) is no less effective than the Federal regulation at 30 CFR 778.13(j). The Director approves proposed Rule 2.03.4(10).

6. Rule 2.03.6(1), Contents of Permit Applications Pertaining to an Applicant's Legal Right to Enter a Proposed Permit Area

Proposed Rule 2.03.6(1), concerning the contents of permit applications pertaining to an applicant's legal right to enter a proposed permit area, is, with one exception, substantively identical to the Federal regulation at 30 CFR 778.15(a).

The exception is that Colorado proposed to add the requirement for the application to contain a "complete and detailed legal description of the proposed permit boundary." The Federal regulation at 30 CFR 778.15(a) does not include this requirement. However, Colorado's inclusion of the requirement for a legal description of the proposed permit boundary to which the applicant has the legal right to enter adds specificity and is not inconsistent with the Federal regulation at 30 CFR 778.15(a).

Therefore, the Director finds that proposed Rule 2.03.6(1) is no less effective than the Federal regulation at 30 CFR 778.15(a) and approves it.

7. Rule 2.07.5(2)(c), Notice and Hearing Procedures for Persons Seeking and Opposing Disclosure of Confidential Information

OSM required at 30 CFR 906.16(a) (56 FR 1371, January 14, 1991) that Colorado amend its program to provide for notice and hearing procedures for persons seeking and opposing disclosure of confidential information.

Colorado proposed a new Rule 2.07.5(2)(c) that states—

(I)Information requested to be held as confidential under 2.07.5(2) shall not be made publicly available until after notice and opportunity to be heard is afforded persons seeking disclosure and those persons opposing disclosure of information and such information is determined by the Board not to be confidential, proprietary information. Information for which disclosure is sought shall not be made available to those persons seeking disclosure prior to or during such opportunity to be heard. Such information shall not be made available until a final decision is made by the Board allowing such disclosure.

The Federal regulations at 30 CFR 773.13(d)(3) require, in part, that the "regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to

ensure confidentiality of qualified confidential information." There is no requirement in the Federal program that the procedures be submitted to OSM for review as a program amendment.

Because Colorado's proposed Rule 2.07.5(2)(c) provides for notice and opportunity to be heard for both parties seeking disclosure and opposing disclosure of information requested to be held confidential, the Director finds that Rule 2.07.5(2)(c) is no less effective than the 30 CFR 773.13(d)(3) and satisfies the requirement that Colorado amend its program at 30 CFR 906.16(a). Therefore, the Director approves proposed Rule 2.07.5(2)(c) and removes the requirement that Colorado amend its program at 30 CFR 906.16(a).

8. Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), Findings Which Must be Made by the State Regulatory Authority Prior to Approval of Applications for Permits and Permit Revisions

Colorado proposed to revise Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), concerning the findings which must be documented prior to approval of applications for permits or permit revisions, to clarify that the findings pertaining to lands unsuitable for mining apply to the proposed "affected areas" rather than to the operations for mining coal within those affected areas. Colorado's definition of "affected area" at Rule 1.04(17) is no less effective than the definition of "affected area" in the Federal regulations at 30 CFR 701.5.

The Federal regulations at 30 CFR 773.15(c)(3) require findings documenting that the proposed permit area, subject to valid existing rights, is (1) not within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations or (2) not within an area designated as unsuitable for mining.

Because the intent of the regulations governing lands unsuitable for mining is to ascertain whether reclamation is technologically and economically feasible, Colorado's proposed revision to clarify that the findings apply to the proposed affected areas rather than to the operations is consistent with the Federal regulations.

Therefore, the Director finds that proposed Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E) are no less effective than the Federal regulations at 30 CFR 773.15(c)(3). The Director approves proposed Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E).

9. Rule 2.07.6(2)(d)(iv), Public Notice and Opportunity for Public Hearing Regarding Proposed (1) Operations Located Within 100 Feet of a Public Road or (2) Operations Which Require Closure or Relocation of a Public Road

Colorado proposed to revise Rule 2.07.6(2)(d)(iv) by adding the option for an appropriate public road authority to conduct required hearings and make findings regarding proposed: (1) Operations located within 100 feet, measured horizontally, of a public road or (2) operations which propose to close or relocate a public road. The revisions clarify that it is the responsibility of Colorado to designate a responsible authority, and that either may approve public road relocation, closure, or that the affected area may be within 100 feet of such road. However, the aforementioned may be done only after public notice and opportunity for a public hearing. Moreover, either must make a written finding stating that the interests of the affected public and landowners will be protected.

The Federal regulations at 30 CFR 761.11(d) provide for either the regulatory authority or the appropriate public road authority to provide for public notice and opportunity for a public hearing and to make written findings stating that the interests of the affected public and landowners will be protected.

Because proposed Rule 2.07.6(2)(d)(iv) provides for public notice, opportunity for public hearing, and requirements for written findings that may be implemented by an appropriate public road authority, the Director finds that proposed Rule 2.07.6(2)(d)(iv) is no less effective than the Federal regulations at 30 CFR 761.11(d). Therefore, the Director approves proposed Rule 2.07.6(2)(d)(iv).

10. Rule 2.07.7(9), Permit Condition Requiring Continuous Bond Coverage

Colorado proposed adding a permit condition at Rule 2.07.7(9) which requires continuous bond coverage but allows for adjustment of the bond amount from time to time to reflect changes in the cost of reclamation due to factors such as inflation and market forces.

Proposed Rule 2.07.7(9) has no direct counterpart in the Federal regulations at 30 CFR 773.17 as a condition to a permit. However, the Federal regulations at (1) 30 CFR 773.17(a) require as a permit condition that the permittee conduct operations only on those lands that are subject to the performance bond in effect pursuant to Subchapter J and (2) 30 CFR 800.4(g)

require that the regulatory authority require in the permit that adequate bond coverage be in effect at all times.

Because the permit condition at proposed Rule 2.07.7(9) contains provisions that are consistent with the requirements of the Federal regulations at 30 CFR 773.17(a) and 800.4(g), the Director finds that proposed Rule 2.07.7(9) is no less effective than these Federal regulations. The Director approves proposed Rule 2.07.7(9).

11. Rules 2.08.4 (1) Through (4), Revisions and Revision Application Requirements

With two exceptions, Colorado proposed revisions to Rules 2.08.4 (1) through (4), concerning revisions and revision application requirements, that are editorial in nature. The Federal regulation at 30 CFR 774.13(b)(2) requires that the regulatory authority establish (1) time periods with which it will act on applications for permit revisions and (2) the scale or extent of revisions for which all permit application information requirements and procedures shall apply. The proposed editorial revisions at Rules 2.08.4 (1) through (4) reorganize existing requirements (without altering the substance of the requirements) to more clearly delineate what types of changes in a proposed operation would require either a permit revision, a technical revision, or a minor revision. These editorial revisions are consistent with the corresponding Federal regulation at 30 CFR 774.13(b)(2).

The first exception is the proposed deletion of Rule 2.08.4(1)(c), which requires that the permittee submit a permit revision in order to continue liability insurance policy, capability of self-insurance, or performance bond, upon which the original permit was issued. OSM has no counterpart requirement to this State rule. The Colorado rule proposed for deletion is less effective than the Federal program in that it would allow an operation to be permitted without continuous bond coverage. The deletion of this rule is consistent with the requirements of the Federal regulations at 30 CFR 800.15 (a) through (d) which provide for adjustments in bond amounts, but which require continuous bond coverage.

The second exception is the proposed addition of Rule 2.08.4(1)(d), which requires a permit revision for any extensions to the area covered by a permit, except for incidental boundary revisions. The corresponding Federal regulation at 30 CFR 774.13(d) provides that any extension to the area covered by the permit, except for an incidental

boundary revision, shall be made by application for a new permit. However, in Colorado's approved program, the procedural requirements of Rule 2.07 are the same for permit revisions and new permit applications. Furthermore, existing Rule 2.08.4(5)(d) requires for all types of permit revision applications such information as may be necessary to determine if the proposed revision will comply with Colorado's approved program. In the "Statement of Basis, Specific statutory Authority, and Purpose" for its August 23, 1988, amendment (administrative record No. 384), Colorado stated that—

(f) or the Division to make the findings required by Rule 2.07.6(2), which applies to * * * permit or (permit) revision applications * * *, it will be necessary for the permittee to submit adequate information pertaining to baseline, operations plan and reclamation plan. Additional information may be requested by the Division if not in sufficient detail pursuant to Rule 2.08.4(4)(d) (recodified as Rule 2.08.4(5)(d)).

OSM interprets this as meaning that all informational requirements applicable to new permits would also be applicable to permit revisions when they involve an extension of area to be covered by a permit other than an incidental boundary change.

Based on the above discussion, the Director finds that the revisions proposed at Rules 2.08.4 (1) through (4) are consistent with and no less effective than the Federal regulations at 30 CFR 774.13(b) (2) and (d) and 800.15 (a) through (d). The Director approves proposed Rules 2.08.4 (1) through (4).

12. Rules 2.08.4(6)(b) (i) and (ii), Public Hearing and Notice Requirements for Technical Revisions

Colorado proposed recodification of existing Rules 2.08.4 (4) and (5) as 2.08.4 (5) and (6). In addition, Colorado proposed: (1) revising Rule 2.08.4(6)(b)(i) to clarify that informal conference procedures do not apply to technical revisions, and (2) adding Rule 2.08.4(6)(b)(ii) to provide a 10-day public comment period for proposed technical revisions. Colorado's defines, at Rule 1.04(136), "Technical revisions" to mean—

A minor change, including incidental permit boundary revisions, to the terms or requirements of a permit issued under these rules, which change shall not cause a significant alteration in the operator's reclamation plan. The term includes, but is not limited to, increases in coal production, reduction or termination of approved environmental monitoring programs, or design changes for regulated structures or facilities.

The Federal regulation at 30 CFR 773.13(c) provides that any person may request an informal conference; however, this provision is applicable only to applications for permits, significant permit revisions, and permit renewals. There is no Federal provision applicable to technical revisions as defined in Colorado's program. Therefore, Colorado's clarification, at proposed Rule 2.08.4(6)(b)(i), that informal conference procedures do not apply to technical revisions is consistent with the Federal regulations at 30 CFR 773.13(c).

Technical revisions, as defined in Colorado's program, are not subject to the requirements in the Federal regulations at 30 CFR 774.13(b)(2) for notice, public participation, and notice of decision. These Federal requirements are applicable to applications for permits and significant permit revisions. Therefore, Colorado's proposed allowance at Rule 2.08.4(6)(b)(ii) for a 10-day comment period on technical revisions provides for a greater degree of public participation than required by the Federal program.

Based on the above discussion, the Director finds that the revisions proposed at Rules 2.08.4(6)(b) (i) and (ii) are consistent with and no less effective than the Federal regulations at 30 CFR 773.13(c) and 774.13(b)(2). The Director approves proposed Rules 2.08.4(6)(b) (i) and (ii).

13. Rule 3.03.1(5), Release of Bond Coverage for Liability Associated With Temporary Drainage and Sediment Control Facilities

Colorado proposed to add Rule 3.03.1(5) which provides that—

(R)elease of bond coverage for liability associated with temporary drainage and sediment control facilities including impoundments and conveying systems shall be authorized only after final inspection, acceptance, and approval by the Division. Such approval shall be granted based on determination by the Division that backfilling and grading, topsoiling, and reseeding of such facilities have been completed in compliance with the approved plan. Vegetative cover must be adequate to control erosion and similar to the surrounding reclaimed area. Reclaimed temporary drainage control facilities shall not be subject to the extended liability period of 3.03.3(2) or the bond release criteria of 3.03.1(2).

a. *OSM's policy concerning the term of liability for reclamation of temporary sediment control facilities.* Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence "after the last year of augmented seeding, fertilizing, irrigation, or other work" needed to assure revegetation success. In the

absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the planted area. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until 2 years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44038-44039, September 26, 1983).

The purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA since (1) the lands involved are small in size and widely dispersed and (2) the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

Direct support for this proposed exception from statutory responsibility period standards can be found in the fact that, on May 16, 1983, OSM promulgated 30 CFR 816.22(a)(3) and 817.22(a)(3), which, in analogous fashion, provide limited exceptions to the requirement in section 515(b)(5) of SMCRA that the operator remove and save topsoil from all lands to be affected by mining activities. In addition, it may reasonably be argued that the areas from which ponds are removed are likely to be no larger than those areas reseeded or replanted pursuant to normal husbandry practices, for which the Federal regulations do not require restarting of the revegetation responsibility period.

However, nothing in this interpretation of section 515(b)(20) of SMCRA shall be construed as exempting such lands from meeting the revegetation requirements of section 515(b)(19) of SMCRA prior to final bond release. As required by 30 CFR 816.46(b)(6), when siltation structures are removed, the land on which they were located must be regraded and

revegetated in accordance with the reclamation plan and the requirements of 30 CFR 816.111 through 816.116, with the exception of 30 CFR 816.116(c), which requires a period of extended responsibility for successful revegetation on reclaimed areas (September 15, 1993, 58 FR 48333).

b. *Comparison of Colorado's proposed Rule 3.03.1(5) with OSM's proposed policy clarification.* Colorado proposed Rule 3.03.1(5) specifies that a bond release decision shall be based "on determination by the Division that backfilling and grading, topsoiling, and reseeding of such facilities has been completed in compliance with the approved [reclamation] plan." Vegetative cover must be adequate to control erosion and similar to the reclaimed area or surrounding undisturbed area. Because the reseeding must be found to be in compliance with the reclamation plan in the approved permit, Colorado has ensured that the vegetation of these reclaimed areas would be subject to (1) Colorado's counterparts to the Federal regulations at 30 CFR 816.111 and 817.111, and (2) those portions of Colorado's counterparts to the Federal regulations at 816.116 and 817.116 related to the attainment of the postmining land use (other than quantitative measurement techniques and liability periods).

Because Colorado's proposed Rule 3.03.1(5) also specifies that vegetative cover must be adequate to control erosion and similar to the reclaimed area or surrounding undisturbed area, the areas where the temporary sediment control structures had been located are expected to be similar to the remainder of the surrounding reclaimed or undisturbed area. This requirement would tend to discourage the removal of ponds or diversions toward the end of the liability period for the surrounding area. If removal of the structures occurs toward the end of the liability period for the larger reclaimed area, the areas where the ponds or diversions existed would not qualify for final bond release until reclamation has been established with some degree of permanence.

Based on the above discussion, the Director finds that Colorado's proposed Rule 3.03.1(5) is consistent with and no less effective than the Federal regulations at 30 CFR 817.46(b) (5) and (6) and sections 515(b) (19) and (20) of SMCRA, as clarified by OSM in the September 15, 1993, Federal Register (58 FR 48333).

14. Rules 4.02.2(2) (a) Through (c), Information Required on Identification Signs

Colorado proposed revising Rule 4.02.2(2)(a), concerning the required information on identification signs displayed at each point of access to the permit area from public roads, to recodify one existing provision as Rule 4.02.2(2)(b), and to add at Rule 4.02.2(2)(c) the requirement that such signs must include the name, address and telephone number of the office where the mining and reclamation permit is filed. With the exception of this added requirement, Rules 4.02.2(2) (a) through (c) are substantively identical to the Federal regulation at 30 CFR 816.11(c)(2).

Colorado's proposed inclusion of the requirement, that the name, address and telephone number of the office where the mining and reclamation permit is filed, provides for information on the mine identification sign that will facilitate the public's ability to participate in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by Colorado and is, therefore, not inconsistent with the Federal regulation at 30 CFR 816.11(c)(2).

Based on the above discussion, the Director finds that proposed Rules 4.02.2(2) (a) through (c) are no less effective than the Federal regulation at 30 CFR 816.11(c)(2). The Director approves Rules 4.02.2(2) (a) through (c).

15. Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii), Engineer's Certification of the construction or Reconstruction of Haul and Access Roads

Colorado proposes to revise Rules 4.03.1(d)(i) and 4.03.2(f)(i) to provide an exemption at Rules 4.03.1(d)(ii) and 4.03.2(f)(ii) from the requirement for an engineer's certification of the construction or reconstruction of haul and access roads that were completed prior to August 1, 1995, if the applicant provides a relevant showing, on a case-by-case basis, which may include monitoring data or other evidence, whether the road meets the performance standards of, respectively, Rules 4.03.1 or 4.03.2.

On August 1, 1995, Colorado promulgated the existing requirement at Rules 4.03.1(d)(i) and 4.03.2(f)(i) for certification of the design and construction of haul and access roads not within the disturbed area. Therefore, proposed Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii) provide the exemption from the certification only

for those haul and access roads that existed prior to the promulgation of the requirement, i.e., only for existing structures.

The Federal regulations corresponding to Rules 4.03.1(1)(d) and 4.03.2(1)(f) are at 30 CFR 816.151(a) and 817.151(a). These regulations became effective on December 8, 1988 (53 FR 45190). Like the State rules, they require the certification of the "construction and reconstruction" of primary roads, which are analogous to Colorado's haul and access roads.

OSM has implemented these Federal regulations by requiring the certification of primary roads that were newly constructed or reconstructed on or after December 8, 1988. For a road that existed prior to December 8, 1988, and that an operator continued to use thereafter, OSM has not required a certification but is has required, in accordance with 30 CFR 780.12(a)(4) and 784.12(a)(4), that the operator show that the road meets the performance standards of 30 CFR, Subchapter K. The applicable performance standards in Subchapter K. The applicable performance standards in Subchapter K are at 30 CFR 816.150(b), 816.151 (b) through (e), 817.150(b), and 817.151 (b) through (e).

Colorado's Rule 2.05.3(3)(b)(i)(D) is similar in its requirements to the Federal regulations at 30 CFR 780.12(a)(4) and 784.12(a)(4). This State rule requires for each existing structure (such as an existing road) a "[s]howing, including relevant monitoring data or other evidence, whether the structure meets the design requirements or performance standards of Rule 4." Colorado's exemption requires that the applicant show that the existing haul or access road that existed prior to August 1, 1995, meets the performance standards of Rule 4.03.2. Rule 4.03.2 contains all of the applicable performance standards that correspond to the Federal regulations at 30 CFR 816.150(b), 816.151 (b) through (e), 817.150(b), and 817.151 (b) through (e).

Based on the above discussion, the Director finds that proposed Rules 4.03.1(d) and 4.03.2(f) are consistent with and no less effective than the Federal regulations at 30 CFR 816.151(a) and 817.151(a), concerning roads, and 780.12(a)(4) and 784.12(a)(4), concerning existing structures. The Director approves proposed Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii).

16. Rules 4.05.2(7), 5.03.3(1)(a), 5.03.3(2)(a) (i) and (ii), and 5.03.3(20)(b), Compliance with the Effluent Limitations for Coal Mining Promulgated by the U.S. Environmental Protection Agency Set Forth in 40 CFR Part 434 and Enforcement Procedures Concerning Violations of Effluent Limitations

a. *Rule 4.05.2(7), Compliance with effluent limitations for coal mining.* Colorado proposed to revise Rule 4.05.2(7), concerning water quality standards and effluent limitations, by adding the requirement that the discharges of water from areas disturbed by surface coal mining and reclamation operations shall be made in compliance with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434, as these rules existed on July 1, 1993.

This requirement is substantively identical to the Federal requirement at 30 CFR 816.42 and 817.42 with the exception that the Federal regulations refer to discharges of water from areas disturbed by "surface and underground mining activities" rather than areas disturbed by "surface coal mining and reclamation operations."

Colorado defines "surface coal mining and reclamation operations" at Rule 1.04(133) to mean surface coal mining operations and all activities necessary and incident to the reclamation of such operations. Colorado's Rule 1.04(132) defines "surface coal mining operations" to mean—

(a) activities conducted on the surface of lands in connection with a surface coal mine or activities subject to the requirements of Section 34–33–121 of the Act which involve surface operations and surface impacts incident to an underground coal mine. * * * and (b) (t)he areas upon which such activities occur or where such activities disturb and natural land surface. Such areas shall also include an adjacent land the use of which is incidental to any such activities, * * *.

Section 34–33–121 of the Colorado Surface Coal Mining Reclamation Act provides for the surface effects of underground coal mining and Rule 4 sets forth the minimum performance standards and design requirements to be used for surface coal mining and reclamation operations incident to underground mining activities. Colorado defines "underground mining activities" at Rule 1.04(144) to mean a combination of

(a) (s)urface operations incident to underground extraction of coal or in situ processing, such as * * *; and (b) (u)nderground operations such as * * *, subject to review for surface and hydrologic impacts in accordance with Rules 2 and 4.

The Federal regulations at 30 CFR 701.5 define "surface mining activities" to mean those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by the recovery of coal from a deposit that is not in its original geologic location. In addition, these Federal regulations define "underground mining activities" to mean a combination of (a) (s)urface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining are placed; and (b) (u)nderground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

The term "underground mining activities" as defined at Colorado's Rule 1.04(144) is substantively identical to the counterpart Federal definition of the same term at 30 CFR 705.1, except Colorado requires that surface operations incident to underground extraction of coal or in situ processing and underground operations are subject to review for surface and hydrologic impacts in accordance with Rules 2 and 4.

Based upon the reference at Rule 1.04(132) to Colorado's Act and Rule 4, which in turn pertain to the surface effects of underground coal mining and underground mining activities, the use of the term "surface coal mining and reclamation operations" at Rule 4.05.2(7) is no less effective than the Federal regulations at 30 CFR 816.42 and 817.42 which pertain to surface mining activities and underground mining activities.

Therefore, based upon the above discussion the Director finds that Colorado's proposed Rule 4.05.2(7) is consistent with and no less effective than the Federal regulations at 30 CFR 816.42 and 817.42 pertaining to water quality standards and effluent limitations. The Director approves proposed Rule 4.05.2(7).

b. Rules 5.03.3(1)(a) and 5.03.3(2)(1)(1), (2)(a)(ii), and (2)(b), Enforcement procedures concerning violations of effluent limitations. Colorado proposed to revise Rule

5.03(1)(a), concerning show cause orders, and Rules 5.03.3(2)(a) (i) and (ii) and 5.03.3(2)(b), concerning patterns of violations, to add new language providing that—

Notices of violation issued by the Water Quality Control Division which cite a one day exceedance of the water quality effluent standards referenced in 4.05.22 shall be included by the Division in determining whether a pattern of violations exists.

The Federal regulations at 30 CFR 843.13(a)(1), (2), and (3) which are the Federal counterpart provisions for orders to show cause when it is determined that a pattern of violations exists or has existed, do not contain a separate requirements that notices of violations of the water quality effluent standards shall be considered by the Director in determining whether a pattern of violations exists. However, these same Federal regulations do not exclude violations of water quality effluent limitations from the violations reviewed to determine whether a pattern of violations exists or has existed. In addition, section 521(d) of SMCRA provides that

(a) as a condition of approval of any State program submitted pursuant to section 503 of this Act, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State regulatory authority by which are not specifically enumerated herein.

Colorado's proposed Rules 5.03.3(1)(a), 5.03.3(2)(a), (i) and (ii), and 5.03.3(2)(b) provide for enforcement procedures that are not specified in the Federal regulations at 30 CFR 843.12(a) (1), (2), and (3). However, the enforcement procedures are consistent with these Federal regulations and with section 521(d) of SMCRA.

Therefore, the Director finds that proposed Rules 5.03.3(1)(a), 5.03.3(2)(a) (i) and (ii), and 5.03.3(2)(b) are no less stringent than section 521(d) of SMCRA and no less effective than the Federal regulations at 30 CFR 843.13(a) (1), (2) and (3). The Director approves proposed Rules 5.03.3(1)(a), 5.03(2)(a) (i) and (ii), and 5.03.3(2)(b).

17. Rule 4.08.3(2)(b)(i), *Blasting Areas*

Colorado proposed to revise Rule 4.08.3(2)(b)(i), concerning blasting areas identified in the blasting schedule, by deleting the requirement for specific approval of a blasting area in excess of 300 acres.

The Federal regulations at 30 CFR 864.64(a)(1) do not place limits on blasting areas, but allow the regulatory authority to limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare. With the deletion of the requirement for approval of a blasting area in excess of 300 acres, Colorado's proposed Rule 4.08.3(2)(b)(i) is substantively identical to the requirement in the Federal regulations at 30 CFR 816.64(c)(2) which requires that the blasting schedule shall contain identification of the specific areas in which blasting will take place.

Therefore, the Director finds that (1) Colorado's proposed deletion of the requirement for approval of a blasting area in excess of 300 acres from Rule 4.08.3(2)(b)(i) is consistent with and no less effective than the Federal regulations at 30 CFR 864.64(a) (1) and (2) proposed Rule 4.08.3(2)(b)(i) is no less effective than the Federal regulations at 30 CFR 816.64(c)(2). The Director approves proposed Rule 4.08.3(2)(b)(i).

18. Rules 5.02.5(1), 5.02.5(1)(a), and 5.02.5(1)(b)(i), *Inspections Based Upon a Citizens' Requests*

a. *Rule 5.02.5 (1) and (1)(a), A person's right to request and inspection and Colorado's response time to a person's request for an inspection.* Colorado proposed to revise Rule 5.02.5(1) to provide that any person who believes there is a violation of Colorado's approved program or permit conditions, or that any imminent danger or harm exists, may request an inspection for violations. Colorado proposed to revise Rule 5.02.5(1)(a) to add the provision that the State will conduct such an inspection within 10 days of receipt of a written request, but that if the request gives Colorado sufficient basis to believe that imminent danger or harm exists, the inspection shall be conducted no later than the next day, following the receipt of such a request.

The Federal regulation at 30 CFR 840.11(b)(1)(i) provides that OSM shall immediately conduct a Federal inspection when it has reason to believe on the basis of information available (other than information resulting from a previous Federal inspection) that there exists a violation of the Federal program, permit condition, or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant,

imminent environmental harm to land, air, or water resources.

Colorado's proposed Rule 5.02.5 (1) and (1)(a) differ from the Federal regulation at 30 CFR 840.11(b)(1)(i) in that they distinguish between those citizen's requests that provide sufficient basis to believe that imminent danger or harm exists and those that do not. Colorado has, in effect, defined in its proposed rules the term "immediately" which is not defined in the Federal program, nor is it discussed in the preamble to the Federal regulations. The Federal regulations at 30 CFR 840.11(b)(1) do not make a distinction in response time between whether or not a citizen's request provides sufficient reason to believe that imminent danger or harm exists.

However, Colorado's proposal to determine the response time to a citizen's request for an inspection, based on whether there is reason to believe there exists imminent harm or danger, is a reasonable interpretation of the Federal regulations and one that would not result in a response or an inspection that would be less effective than the one required in the Federal regulations. Therefore, the Director finds that Colorado's proposed Rules 5.02.5 (1) and (1)(a) are consistent with and no less effective than the Federal regulation at 30 CFR 840.11(b)(1)(i). The Director approves proposed Rule 5.02.5 (1) and (1)(a).

b. *Rule 5.02.5(1)(b) (i) and (ii), When a citizen's request for inspection gives sufficient reason to believe that there is cause for an inspection.* Colorado proposed to revise Rule 5.02.5(1)(b), which defines when it will have sufficient basis to believe there is cause for an inspection requested by a citizen, by replacing the word "and" with the word "or" between paragraphs (i) and (ii), so that these proposed rules define the "sufficient basis to believe" exists when

(i) The request alleges facts that, if true, would constitute any of the above-described violations; or

(ii) The request either states the basis upon which the facts are known by the requesting citizen or provides other corroborating evidence sufficient to give the Division a basis to believe that the violation has occurred.

The corresponding Federal regulation at 30 CFR 842.11(b)(2) states that an authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in 30 CFR 842.11 (b)(1)(i).

Colorado's existing Rule 5.02.5(1)(b)(i) is substantially identical to the Federal regulation at 30 CFR 842.11(b)(2). Existing Rule 5.02.5(1)(b)(ii) provides a more stringent condition than does Colorado's Rule 5.02.5(1)(b)(i) and the Federal regulation at 30 CFR 842.11(b)(2). However, proposed Rules 5.02.5(1)(b)(i) and (ii) no longer require that a citizen's request for an inspection meet the criterium of Rule 5.02.5(1)(b)(ii), but provide that the criterium at Rule 5.02.5(1)(b)(ii) is optional.

Therefore, the Director finds that Colorado's proposed Rules 5.02.5(1)(b)(i) and (ii) are no less effective than the Federal regulation at 30 CFR 842.11(b)(2) in responding to a citizen's complaint. The Director approves proposed Rules 5.02.5(1)(b)(i) and (ii).

19. Rules 5.02.2(8) (a) Through (c), Inspection Frequency at Abandoned Sites; and Rule 5.03.2(3), Enforcement Procedures at Abandoned Sites

a. *Rules 5.02.2(8) (a) through (c), Inspection frequency at abandoned sites.* Colorado proposed adding Rules 5.02.2(8) (a), (b), and (c), to identify the criteria and requirements for public notice that must be implemented for determining the inspection frequency of abandoned sites.

Proposed Rules 5.02.2(8)(a), (b), and (c) are, with one exception, substantively identical to the Federal regulations at 30 CFR 840.11(h)(1) and (2). The exception is proposed Rule 5.02.2(8)(c), which states that—

(T)he Division shall implement a final inspection frequency based on its findings and any additional information received during the comment period."

Proposed Rule 5.02.2(8)(c) has no counterpart in the Federal program. This is a declarative statement of the duties of the regulatory authority and does not alter the substance of the requirements concerning the criteria and the requirements for public notice that must be used when determining the inspection frequency of abandoned sites.

Therefore, based on the above discussion, the Director finds that proposed Rules 5.02.2(8) (a) through (c) are no less effective than the respective Federal regulations at 30 CFR 840.11(h)(1) and (2). The Director approves proposed Rules 5.02.2(8) (a) through (c).

b. *Rule 5.03.2(3), Enforcement procedures at abandoned sites.* Colorado proposed revising Rule 5.03.2(3), concerning notices of violation and subsequent failure-to-abate cessation orders (FTACO), by adding the statement that Colorado—

May refrain from issuing a failure-to-abate cessation order for such failure to abate a

violation or failure to accomplish an interim step, if the operation is an abandoned site as defined in 1.04(1).

Existing Rule 5.03.2(3) is substantively identical to 30 CFR 843.11(b)(1). However, there is no provision at 30 CFR 843.11(b)(1) concerning enforcement of notices of violation at abandoned sites. The Federal regulations at 30 CFR 843.22 provide that a cessation order need not be issued at an abandoned site if abatement of the violation is required under any previously issued notice or order. Colorado's proposed allowance at Rule 5.03.2(3) to refrain from issuing an FTACO if the site qualifies as an abandoned site would apply only when abatement of the violation is already required under a previously issued notice of violation.

Therefore, based on the above discussion, the Director finds that proposed Rule 5.03.2(3) is no less effective than 30 CFR 843.22. The Director approves proposed Rule 5.03.2(3).

IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Colorado program.

The U.S. Forest Service responded on December 15, 1995, and March 26, 1996, that it had no comments on the proposed amendment (administrative record Nos. CO-675-3 and CO-675-13).

The U.S. Natural Resources Conservation Service responded on December 20 and 21, 1995, that it had no comments on the proposed amendment (administrative record No. CO-675-4).

The U.S. Army Corps of Engineers responded on December 27, 1995, that it had found the proposed amendment to be satisfactory (administrative record No. CO-675-5).

The U.S. Mine Safety and Health Administration (MSHA) responded on December 27, 1995, and March 20, 1996, that the proposed amendment did not conflict with MSHA standards (administrative record Nos. CO-675-7 and CO-675-12).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated 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.*).

OSM solicited EPA's concurrence with the proposed amendment (administrative record CO-675-1). On April 10, 1996, EPA gave its written concurrence and stated that it had no comments on the proposed revisions (administration record No. CO-675-14).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. CO-675-1). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Colorado's proposed amendment as submitted on November 20, 1995, and revised on February 16, 1996, and removes the requires amendment at 30 CFR 906.16(a).

The Director approves, as discussed in:

Finding No. 1, Rule 2.07.3(a)(iii), Rule 2.07.7(1), Rule 2.08.6(2)(b)(iii), and Rule 4.08.4(10), concerning nonsubstantive revisions to previously approved rules that consist of editorial revisions;

Finding No. 2, Rules 1.04(1), 1.04(31a), (31b), (47a), (71a), (76), (83b), (92), (116), and (135a); Rule 2.02.7; Rule 2.07.6(2); Rules 2.07.7 (6), (7), and (8); Rule 2.08.6(4)(a); Rules 3.02.4(1)(c) and 3.02.4(2)(e); Rules 3.03.3 (1) and (2); Rule 4.11.3; Rule 5.02.2(4)(b); and Rules 5.03.2(1)(e) and 5.03.2(2)(h); concerning substantive revisions to previously approved rules that are substantively identical to the Federal regulations;

Finding No. 3, Rules 1.03.1(1)(a), 2.03.3(8), 2.07.3(2), 2.07.3(2) (e) and (f), 20.07.3(3)(a), 2.07.3(4)(a), 2.07.4(2), and 2.07.4(3) (b) and (c), concerning permit applications, public notice requirements, permit review and decision, and bonding requirements prior to permit issuance;

Finding No. 4, Rule 1.04(89), concerning the definition of "Permit area;"

Finding No. 5, Rule 2.03.4(10), concerning permit application requirements concerning identification of interests and compliance information;

Finding No. 6, Rule 2.03.6(1), concerning contents of permit applications pertaining to an applicant's legal right to enter a proposed permit area;

Finding No. 7, Rule 2.07.5(2)(c), concerning notice and hearing procedures for persons seeking and opposing disclosure of confidential information;

Finding No. 8, Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), concerning findings which must be made by the State regulatory authority prior to approval of applications for permits and permit revisions;

Finding No. 9, Rule 2.07.6(2)(d)(iv), concerning public notice and opportunity for public hearing regarding proposed (1) operations located within 100 feet, measured horizontally, of a public road or (2) operations which require closure or relocation of a public road;

Finding No. 10, Rule 2.07.7(9), concerning permit conditions requiring continuous bond coverage;

Finding No. 11, Rules 2.08.4 (1) through (4), concerning permit revisions and permit revision application requirements;

Finding No. 12, Rules 2.08.4(6)(b) (i) and (ii), concerning public hearing and notice requirements for technical revisions;

Finding No. 13, Rule 3.03.1(5), concerning release of bond coverage for liability associated with temporary drainage and sediment control facilities;

Finding No. 14, Rules 4.02.2(2) (a) through (c), concerning information required on identification signs;

Finding No. 15, Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii), concerning an engineer's certification of the construction or reconstruction of haul and access road;

Finding No. 16, Rules 4.05.2(7), 5.03.3(1)(a), 5.03.3(2)(a) (i) and (ii), and 5.03.3(2)(b), concerning (1) compliance with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434 and (2) enforcement procedures concerning violations of effluent limitations;

Finding No. 17, Rule 4.08.3(2)(b)(i), concerning blasting areas;

Finding No. 18, Rules 5.02.5(1), 5.02.5(1)(a), and 5.02.5(1)(b)(i), concerning inspections based upon citizens' requests; and

Finding No. 19, Rules 5.02.2(8) (a) through (c), concerning inspection frequency at abandoned sites, and Rule 5.03.2(3), concerning enforcement procedures at abandoned sites.

The Federal regulations at 30 CFR part 906, codifying decisions concerning

the Colorado program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. 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. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined 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 Tribe or State submittal which is the subject of this rule is based upon 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. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

6. Unfunded Mandates Reform Act

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding paragraph (u) to read as follows:

§ 906.15 Approval of amendments to the Colorado regulatory program.

* * * * *

(u) The Director approves the proposed revisions submitted by Colorado on November 20, 1995, and revised on February 16, 1996.

3. Section 906.16 is amended by removing and reserving paragraph (a) to read as follows:

§ 906.16 Required program amendments.

* * * * *

(a)–(c) [Reserved.]

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[FR Doc. 96–13266 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 913

[SPATS No. IL–089–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.