

Under the authority of Executive Order 12866, 3 CFR; 1993. Comp., P. 638, and for the reasons stated above, Part 250 is removed from 25 CFR.

Dated: November 5, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO-030-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 statutes pertaining to definitions, development of rules no more stringent than SMCRA, requirements for permit applications, material damage resulting from subsidence caused by underground coal mining operations, imprudently issued permits, release of performance bonds, entitles and operations subject to the requirements of the Colorado Surface Coal Mining Reclamation Act, authority to apply for funds for the administration and fulfillment of the requirements of an abandoned mine reclamation program, and creation of a Colorado mine subsidence protection program. The amendment revised the State program to clarify ambiguities and improve operational efficiency.

EFFECTIVE DATE: November 22, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 844-1424.

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 letters dated August 13 and 27, 1996, Colorado submitted a proposed amendment (administrative record No. CO-680) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the September 10, 1996, Federal Register (61 FR 47722), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. CO-680-2). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 10, 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 August 13 and 27, 1996, is no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Substantive Revisions to the Colorado Revised Statutes (C.R.S.) That Are Substantively Identical to the Corresponding Provisions of SMCRA

Colorado proposed revisions to the Colorado Surface Coal Mining Reclamation Act, C.R.S., that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal SMCRA provisions (listed in parentheses).

C.R.S. 34-33-127 (section 534 of SMCRA), concerning public agencies, public utilities, and public corporations which are subject to the requirements of Colorado's Act, and

C.R.S. 34-33-129(1)(a) (section 528(1) of SMCRA), concerning the exemption from the requirements of Colorado's Act for the extraction of coal by a landowner for his own use.

Because these proposed Colorado statutes are substantively identical to the corresponding provisions of SMCRA, the Director finds that they are no less stringent than SMCRA. The Director approves these proposed statutes.

2. C.R.S. 34-33-103 (1), (7), and (13.5), Definitions of "Administrator," "Division," and "Office"

Colorado revised the definitions of "Administrator" and "Division" at C.R.S. 34-33-103 (1) and (7) to mean, respectively, the "head of the Office of Mined Land Reclamation in the Division of Minerals and Geology" and "Division of Minerals and Geology." Colorado added the definition of "Office" at C.R.S. 34-33-1-3 (13.5) to mean the "Office of Mined Land Reclamation." In addition, Colorado proposed editorial revisions throughout C.R.S. 34-33-104 through 126 to (1) replace the term "Division" with the term "Office" and (2) replace the terms "he" and "his" with gender neutral terms. Colorado proposed these revisions in accordance with a May 1992 reorganization of the regulatory authority, which did not result in significant changes in staffing and resources.

The Federal definition of "State regulatory authority" at section 701(26) of SMCRA means "the department or agency in each State which has primary responsibility at the State level for administering this Act."

Because the proposed Colorado definition clearly defines the agency and positions responsible at the State level for implementing the State counterpart to SMCRA, the Director finds that Colorado's proposed definitions of "Administrator," "Division," and "Office" at C.R.S. 34-33-103(1), (7), and (13.5), and related editorial revisions are consistent with and no less stringent than the definition of "State regulatory authority" at section 701(26) of SMCRA. Therefore, the Director approves the proposed definitions and other editorial revisions.

3. C.R.S. 34-33-103(14), (21), and (26), Definitions of "Operator," "Person," and "Surface Coal Mining Operations"

a. C.R.S. 34-33-103(14) and (26), Definitions of "Operator," and "Surface Coal Mining Operations"

Colorado revised, at C.R.S. 34-33-103(14) and (26), respectively, the definitions of "Operator" and "Surface coal mining operations" to include removal of coal from "coal mine waste." Colorado revised the definition of "Surface coal mining operations" to delete the exemption for the extraction of coal incidental to the extraction of other minerals. Colorado also proposed deletion of an extraneous use of the term "removal" from the definition for "Surface coal mining operations." Colorado's proposed definitions of "Operator" and "Surface coal mining

operations" are, with two exceptions, substantively identical to the counterpart Federal definitions of "Operator" and "Surface coal mining operations" at section 701(13) and (28) of SMCRA.

The first exception concerns Colorado's inclusion of the removal of coal from coal mine waste in the definitions of "Operation" and "Surface coal mining operations." The corresponding Federal definitions of "Operator" and "Surface coal mining operations" do not include the removal of coal from coal mine waste.

With respect to the first exception, the Federal regulations at 30 CFR 701.5 define "surface coal mining activities" to include recovery of coal from a deposit that is not in its original geologic location. Colorado has the same definition in its program at Rule 104(131). Colorado's proposed revisions to include recovery of coal from coal mining waste in both definitions add clarity and consistency to Colorado's program.

The second exception concerns Colorado's deletion from the definition for "Surface coal mining operations" of the exemption for the extraction of coal incidental to the extraction of other minerals. The Federal definition of "Surface coal mining operations" includes the exemption for the extraction of coal incidental to the extraction of other minerals.

With respect to the second exception, Colorado stated that because it has never received a request concerning an exemption for the extraction of coal incidental to the extraction of other minerals, nor has it investigated a mining operation where coal was being extracted but was not the primary objective, Colorado concluded that the exemption was not warranted. Colorado's deletion of this exemption does not cause its program to be less stringent than SMCRA.

Colorado's deletion of the extraneous term "removal" from the definition for "Surface coal mining operations" is nonsignificant and editorial in nature and does not cause the definition to be less stringent than the Federal definition.

Based on the above discussion, the Director finds that Colorado's proposed definitions of "Operator" and "Surface coal mining operations" at C.R.S. 34-33-103(14) and (26) are consistent with and no less stringent than the definitions of "Operator" and "Surface coal mining operations" in SMCRA at section 701(13) and (28), and the definition of "surface coal mining activities" at 30 CFR 701.5. Therefore, the Director approves the definitions.

b. C.R.S. 34-33-103(21), Definition of "Person"

Colorado proposed at C.R.S. 34-33-103(21) to revise its statutory definition of "person" to include (1) Indian Tribes conducting surface coal mining and reclamation operations outside Indian lands and (2) publicly-owned utilities or corporations.

Colorado's proposed definition of "person" is substantively identical to the Federal definition of "Person" at section 701(19) of SMCRA with the following exception. The Federal definition does not specifically address Indian Tribes conducting operations on non-Indian lands and publicly-owned utilities or corporations, but it does incorporate such entities into its definition through the use of the phrase "or other business organization." However, the Federal definition of "person" at 30 CFR 700.5 does include an "Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands."

Based on the above discussion, the Director finds that Colorado's proposed clarification of its definition of "Person" at C.R.S. 34-33-103(21) is consistent with and no less stringent than the Federal definition of "Person" at section 701(19) of SMCRA, and approves the definition.

4. C.R.S. 34-33-108, Rules No More Stringent Than SMCRA

Colorado proposed to revise C.R.S. 34-33-108(1) to require that rules and regulations promulgated pursuant to its Act shall be no more stringent than required to be as effective as SMCRA and the Federal regulations. Colorado proposed to revise C.R.S. 34-33-108(2) to (1) require automatic repeal of a State regulation within ninety, rather than sixty, days after the corresponding Federal law, rule, or regulation is repealed, deleted, or withdrawn, and (2) allow, upon request, a rulemaking hearing prior to such repeal.

Section 503 of SMCRA requires that State programs be in accordance with the requirements of SMCRA and include rules that are consistent with the regulations issued by the Secretary pursuant to SMCRA. However, the Federal regulations at 30 CFR 730.5 define "consistent with and in accordance with" to mean, with regard to SMCRA, that the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions, and, with regard to the Federal regulations, that the State laws and regulations are no less effective than the Secretary's

regulations in meeting the requirements of SMCRA.

Proposed C.R.S. 34-33-108(1), which requires that Colorado's rules and regulations shall be no more stringent than required to be as effective as SMCRA and the Federal regulations, is consistent with and no less stringent than section 503 of SMCRA and the Federal regulations at 30 CFR 701.5. Proposed C.R.S. 34-33-108(2), which has no counterpart in the Federal program, provides an additional 30 days before the automatic repeal of Colorado's rules corresponding to Federal regulations that have been repealed, deleted, or withdrawn and provides the opportunity for a person to request a rulemaking hearing regarding the automatic repeal. While the existing provision was not inconsistent with section 503 of SMCRA, both revisions provide greater opportunity for public input concerning Colorado's rulemaking procedures.

Based on the above discussion, the Director finds that proposed C.R.S. 34-33-108(1) and (2) are no less stringent than section 503 of SMCRA, and approves them.

5. C.R.S. 34-33-110(4), Requirements for Permit Applications

Colorado proposed to revise C.R.S. 34-33-110(4) by adding the requirement that a permit application be filed with any public office identified in regulations promulgated pursuant to its Act. Colorado's existing Rule 2.07.3(4)(a) requires that an applicant to file a copy of the permit application in the courthouse of the county where the mining is proposed to occur.

Section 507(e) of SMCRA requires that a permit application be filed at an appropriate public office approved by the regulatory authority where the mining is proposed to occur.

Colorado's proposed C.R.S. 34-33-110(4), in conjunction with Rule 2.07.3(4)(a), is substantively identical to the requirement at section 507(e) of SMCRA. Therefore, the Director finds that Colorado's proposed section 34-33-110(4) is consistent with and no less stringent than section 507(e) of SMCRA, and approves the proposed revision.

6. C.R.S. 34-33-115(1)(c), Application for Extension of Area Covered by an Existing Permit by Permit Revision

Colorado proposed to revise C.R.S. 34-33-115(1)(c) to require that a permittee apply for an extension of the area (other than incidental boundary changes) covered by the permit by application for either a permit revision or new permit. Colorado's existing Rule 2.08.4(1)(d) requires that a permit

revision shall be obtained "for any extensions to the area covered by a permit, except for incidental boundary revisions."

Section 511(a) of SMCRA requires that applications for extension of the area covered by the permit, except incidental boundary revisions, must be made by application for a new permit.

The procedural requirements of Colorado's Rule 2.07, including public notice and opportunity for a public hearing, are the same for permit revision and new permit applications, and Colorado stated 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 (finding No. 11, 61 FR 26792, 26796, May 29, 1996; administrative record No. CO-675-16).

Based on the above discussion, the Director finds that proposed C.R.S. 34-33-115(1)(c) is no less stringent than section 511(a) of SMCRA, and approves the proposed revision.

7. C.R.S. 34-33-121(2)(a), Surface Effects of Underground Mining

Colorado proposed to revise C.R.S. 34-33-121(2)(a) by adding, at paragraph (2)(a)(II), requirements for mitigation of subsidence-caused material damage to any occupied residential dwelling and related structures or any noncommercial building. The proposed mitigation could occur by means of rehabilitation, replacement, or compensation. (Existing paragraph (a)(I) requires operators to adopt measures consistent with known technology in order to prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner.)

Proposed C.R.S. 34-33-121(2)(a)(II) is, with one exception, consistent with the requirements of section 720 of SMCRA regarding mitigation of subsidence-caused material damage to occupied residential dwellings or non-commercial structures and drinking, domestic, or residential water supplies.

The exception is that proposed C.R.S. 34-33-121(2)(a)(II) does not include the requirement in section 720 of SMCRA to "promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination,

diminution, or interruption resulting from underground coal mining operations."

With respect to the exception concerning replacement of drinking, domestic, or residential water supplies, proposed C.R.S. 34-33-121(2)(a)(II) is less stringent than section 720 of SMCRA. Therefore, to be no less stringent than section 720 of SMCRA, Colorado must revise its Act to require permittees for underground coal mining operations conducted after October 24, 1992, to promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

OSM, on June 5, 1996, sent Colorado a 30 CFR Part 732 letter (administrative record No. CO-679) concerning the need to revise its program to address the requirements for repair of subsidence-caused damages at section 720 of SMCRA. By letter dated August 5, 1996 (administrative record No. CO-681), Colorado stated that it would submit further revisions to its approved program to address the requirements of section 720 of SMCRA and the Federal regulations at 30 CFR 817.121.

Because OSM has notified Colorado of its obligation to revise its approved program concerning subsidence-caused damages, and Colorado has agreed to submit a future program amendment, OSM will not at this time require an amendment specific to the replacement of drinking, domestic, or residential water supplies. In the meantime, there will be joint Federal (OSM) and State (Colorado) enforcement of any subsidence-caused damages to a "drinking, domestic, or residential water supply" as defined in the Federal regulations at 30 CFR 701.5 (60 FR 38491, July 27, 1995; administrative record No. CO-671).

Based on the above discussion, the Director, with the exception concerning Colorado's lack of a provision specific to subsidence-caused material damage to drinking, domestic, or residential water supplies, approves proposed C.R.S. 34-33-121(2)(a)(II).

8. C.R.S. 34-33-123(13) (a) and (b), Enforcement of Improvidently Issued Permits

Colorado proposed to revise C.R.S. 34-33-123(13) (a) and (b) to provide statutory authority that will allow Colorado to draft rules that are counterpart to the Federal regulations at 30 CFR 773.20 and 773.21, concerning

enforcement of improvidently issued permits. The proposed statutory provision in paragraph (a) states that when Colorado, based on criteria established in its rules, which must be no less effective than the criteria in 30 CFR 773.20, finds that it has improvidently issued a permit, it shall implement remedial measures set forth in its rule, which must be no less effective than 30 CFR 773.20. Furthermore, proposed paragraph (b) states that when an order to show cause is issued pursuant to this section, the order shall include the reasons for the finding that the permit was improvidently issued, and shall provide opportunity for a public hearing to be held in accordance with C.R.S. 34-33-124, and pursuant to such rules and regulations Colorado may adopt. The proposed statutory provision in paragraph (b) specifies that rules adopted pursuant to this section shall be no less effective than the Federal regulations at 30 CFR 773.21.

Section 510(c) of SMCRA precludes issuance of a permit where any surface coal mining operation owned or controlled by the applicant is in violation of SMCRA until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority. Colorado's proposed provision at C.R.S. 34-33-123(13)(b) for a public hearing is no less effective than the requirement at 30 CFR 773.20(c)(2), concerning remedial measures, for the "opportunity to request administrative review of the notice under 43 CFR 4.1370 through 4.1377."

Colorado's proposed revision of C.R.S. 34-33-123(13) (a) and (b) is consistent with section 510(c) of SMCRA and contains no language that is less effective than the requirements at 30 CFR 773.20 and 773.21. Therefore, the Director finds that proposed C.R.S. 34-33(13) (a) and (b) is no less stringent than section 510(c) of SMCRA and approves the revision.

9. C.R.S. 34-33-125 (4) and (8), Release of Performance Bonds

Colorado proposed to revise C.R.S. 34-33-125 (4) and (8) to, respectively, (1) allow sixty rather than thirty days from the date of completion of the bond release inspection and evaluation for Colorado to provide written notification to the permittee of its proposed decision to release or not release all or part of the performance bond and (2) condition the provision for an informal conference concerning the bond release by stating that the conference must conclude by

the sixtieth day following the bond release and inspection evaluation.

With respect to proposed C.R.S. 34-33-125(4), section 519(b) of SMCRA requires that the regulatory authority notify the permittee in writing of its decision regarding the bond release request within sixty days from the filing of the request, or within thirty days after a public hearing on the request when one is held.

Because the SMCRA deadline is procedural, OSM can evaluate Colorado's counterpart provision under a "same as or similar to" standard in determining whether a proposed State procedure is consistent with and in accordance with SMCRA. The only difference in the procedure is an extra thirty days, which increases the amount of time for the regulatory authority to carry out its review responsibilities and does not prejudice a permittee's right to due process. For these reasons, OSM considers the extra 30 days to be reasonable and finds that Colorado's procedure itself is similar to the procedural requirements of section 519(b) of SMCRA.

With respect to proposed C.R.S. 34-33-125(8), section 519(g) of SMCRA provides that the regulatory authority may establish an informal conference as provided in section 513 to resolve written objections to a proposed bond release. Section 513(b) of SMCRA provides that, if written objections are filed and an informal conference requested, the regulatory authority shall then hold an informal conference in the locality of the proposed mining, if requested within a reasonable time of the receipt of such objections or request.

Colorado's exiting Rule 3.03.2(4)(c), concerning an informal conference that is held to resolve written comments or objections to a bond release, specifies that the conference must be held within 30 days from the date of the notice (of requested bond release that is published in a newspaper) and must conclude by the sixtieth day following the bond release inspection and evaluation.

Colorado's proposed C.R.S. 34-33-125(8) conditions the allowance for the informal conference on its conclusion within 60 days following the bond release and inspection evaluation, but Colorado's Rule 3.03.2(4)(c) clearly provides, within a reasonable time frame, for an informal conference concerning a decision to release or not release a performance bond.

Based on the above discussion, the Director finds that Colorado's proposed C.R.S. 34-33-125 (4) and (8) are consistent with and no less effective than sections 519 (b) and (g) of SMCRA, and approves the proposed revisions.

10. C.R.S. 34-33-129(1)(b), Deletion of the Exemption from the Requirements of Colorado's Act for Coal Extraction Affecting 2 Acres or Less

As originally codified, Colorado, at C.R.S. 34-33-129(1)(b), excluded from regulation those coal extraction operations affecting 2 acres or less. Similarly, as originally enacted, section 528(2) of SMCRA exempted from the requirements of SMCRA all coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100-34, which repealed the section 528(2) exemption and preempted any acreage-based exemptions included in State laws or regulations.

The amendment under consideration in this rulemaking removed the language of C.R.S. 34-33-129(1)(b) preempted by Public Law 100-34. The Director finds that C.R.S. 34-33-129(1)(b), as revised by this amendment, is no less stringent than section 528 of SMCRA and approves it. Removal of the acreage-based exemption from the Colorado Surface Coal Mining Reclamation Act will avoid confusion on the part of the public, which may not be aware of the Federal preemption.

11. C.R.S. 34-33-133(2), Authorization to Collect Funds for the Abandoned Mine Reclamation Plan

Colorado proposed to revise C.R.S. 34-33-133(2)(a) to provide statutory authority for the State regulatory authority to apply for, receive, and expend grant moneys to not only develop but also to administer and fulfill the requirements of the abandoned mine reclamation program.

Although there is no direct counterpart to proposed C.R.S. 34-33-133(2)(a), it is consistent with section 405(b) of SMCRA which requires development of a State Reclamation Plan and annual projects to carry out the purposes of the abandoned mined land reclamation program, and with section 705(a) of SMCRA that authorizes the Secretary to make annual grants to States in developing, administering, and enforcing State programs under SMCRA. Colorado's provision at proposed C.R.S. 34-33-133(2)(a) uses the term "fulfillment" rather than "enforcement." This term is appropriate in the context of the abandoned mined land reclamation program under Title IV of SMCRA.

For these reasons, the Director finds that proposed C.R.S. 34-33-133(2)(a) is no less stringent than sections 405(b) and 705(a) of SMCRA, and approves the proposed revision.

12. C.R.S. 34-33-133.5(1) and (2), Colorado Coal Mine Subsidence Protection Program

Colorado proposed C.R.S. 34-33-133.5(1) and (2) to provide statutory authority for Colorado to assess and expend fees collected from participants who are insured under the subsidence protection program, and expend interest earned on such fees as necessary to defray administrative costs of the program.

Although there is no direct counterpart in SMCRA, section 401(c)(1) of SMCRA provides that moneys in the abandoned mined land reclamation program may be used to establish a self-sustaining, individual State-administered program to insure private property against damages caused by land subsidence resulting from underground coal mining. The Federal regulation at 30 CFR 887.12(a) provides that an agency may use moneys granted under the abandoned mined land reclamation program to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The Federal regulation at 30 CFR 887.12(e) requires that insurance premiums shall be considered program income and must be used to further eligible subsidence insurance program objectives. Therefore, the subsidence insurance program is intended to be self-generating and after an initial OSM grant, no further grant money will be available. The allowance to assess fees and use them to defray administrative costs is in accordance with the Uniform Administrative Requirements for Grants to States and Local Governments, OMB, Circular A-102, attachment E, as well as sections I-420-10A, B6, and C4 of OSM's Federal Assistance Manual.

The Director finds that proposed C.R.S. 34-33-133.5(1) and (2) are consistent with and no less stringent than section 401(c)(1) of SMCRA and no less effective than the Federal regulations at 30 CFR 887.12(a) and (e). The Director approves proposed C.R.S. 34-33-133.5(1) and (2).

IV. Summary and Disposition of Comments

Following are summaries of all substantive 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. Army Corps of Engineers responded on October 1, 1996, that it found the changes to be satisfactory (administrative record No. CO-680-3).

The U.S. Forest Service responded on October 9, 1996, that it had no comments (administrative record No. CO-680-4).

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.*).

None of the revisions that Colorado proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. CO-680-1). It did not respond to OSM's request.

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-680-1). Neither 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 August 13 and 27, 1996.

The Director approves, as discussed in:

Finding No. 1, C.R.S. 34-33-127, entities subject to the requirements of Colorado's Act, and C.R.S. 34-33-129(1)(a), requirements of Colorado's Act for the extraction of coal by a landowner for his own use, concerning revisions that are substantively identical to the corresponding provisions of SMCRA;

Finding No. 2, C.R.S. 34-33-103 (1) and (7), concerning the definitions of "Administrator" and "Division";

Finding No. 3.a, C.R.S. 34-33-103 (14) and (26), concerning the definitions

of "Operator" and "Surface coal mining operations";

Finding No. 3.b, C.R.S. 34-33-103(21), concerning the definition of "Person";

Finding No. 4, C.R.S. 34-33-108(1), concerning rules and regulations promulgated pursuant to its Act which shall be no more stringent than required to be as effective as SMCRA and the Federal regulations, and C.R.S. 34-33-108(2) concerning automatic repeal of a State regulation within ninety days after the corresponding Federal law, rule, or regulation is repealed, deleted, or withdrawn, and allowance, upon request, for a rule-making hearing prior to such repeal;

Finding No. 5, C.R.S. 34-33-110(4), concerning requirements for permit applications;

Finding No. 6, C.R.S. 34-33-115(1)(c), concerning applications for extension of area covered by an existing permit by a permit revision;

Finding No. 7, C.R.S. 34-33-121(2)(a)(II), concerning requirements for mitigation of subsidence-caused material damage to any occupied residential dwelling and related structures or any noncommercial building;

Finding No. 8, C.R.S. 34-33-123(13) (a) and (b), concerning enforcement of imprudently issued permits;

Finding No. 9, C.R.S. 34-33-125 (4) and (8), concerning release of performance bonds;

Finding No. 10, C.R.S. 34-33-129(1)(b), concerning the deletion of the exemption from the requirements of Colorado's Act for coal extraction affecting 2 acres or less;

Finding No. 11, C.R.S. 34-33-133(2), concerning authorization to collect funds for the abandoned mine reclamation plan; and

Finding No. 12, C.R.S. 34-33-133.5 (1) and (2), concerning Colorado's coal mine subsidence protection program.

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.

VI. 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 State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

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 State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. *Unfunded Mandates*

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: October 22, 1996.

Russell F. Price,

Acting 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 (v) to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(v) The following revised statutes, as submitted to OSM on August 13 and 27, 1996, are approved effective November 22, 1996:

C.R.S. 34-33-103 (1), (7), (14), (21), and (26), definitions of "Administrator," "Division," "Operator," "Person," and "Surface coal mining operations;"

C.R.S. 34-33-108(1), rules and regulations promulgated pursuant to its Act which shall be no more stringent than required to be as effective as SMCRA and the Federal regulations;

C.R.S. 34-33-108(2), automatic repeal of a State regulation within ninety days after the corresponding Federal law, rule, or regulation is repealed, deleted, or withdrawn, and allowance, upon request, for a rule-making hearing prior to such repeal;

C.R.S. 34-33-110(4), requirements for permit applications;

C.R.S. 34-33-115(1)(c), applications for extension of area covered by an existing permit by a permit revision;

C.R.S. 34-33-121(2)(a)(II), requirements for mitigation of subsidence-caused material damage to any occupied residential dwelling and related structures or any noncommercial building;

C.R.S. 34-33-123(13) (a) and (b), enforcement of improvidently issued permits;

C.R.S. 34-33-125 (4) and (8), release of performance bonds;

C.R.S. 34-33-127, entities subject to the requirements of Colorado's Act;

C.R.S. 34-33-129(1)(a), requirements of Colorado's Act for the extraction of coal by a landowner for his own use;

C.R.S. 34-33-129(1)(b), deletion of the exemption from the requirements of Colorado's Act for coal extraction affecting 2-acres or less;

C.R.S. 34-33-133(2), authorization to collect funds for the abandoned mine reclamation plan; and

C.R.S. 34-33-133.5 (1) and (2), coal mine subsidence protection program.

[FR Doc. 96-29840 Filed 11-21-96; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

RIN-0720-AA26

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Five Separate Changes

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule addresses five separate changes to comply with provisions affecting CHAMPUS. These changes will update this part to include as a benefit, a screen to check for the level of lead in the blood of an infant; to eliminate the implied statement that ambulance services are covered only to, from, and between hospitals; to include other forms of prescribed contraceptives by eliminating the reference that limits prescribed contraceptives only to those taken orally; to identify three additional Gulf Conflict groups eligible for the delay in the increased deductible; and to establish lower limits on the fiscal year catastrophic cap from \$10,000 to \$7,500 for all eligibles except dependents of active duty personnel, whose limit remains at \$1,000.

EFFECTIVE DATE: This final rule is effective February 20, 1997 except for the changes in section 199.4 which are listed below:

1. Paragraph (c)(3)(xi)(A)(7) is effective December 5, 1991;
2. Paragraph (e)(3)(i)(A)(3) is effective October 29, 1992;
3. Paragraph (f)(2)(i)(G) is effective on October 1, 1991; and
4. Paragraph (f)(10) is effective on October 1, 1992.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Margaret Brown, Program Development Branch, OCHAMPUS, telephone (303) 361-1181.

SUPPLEMENTARY INFORMATION: A proposed rule regarding these changes was published in the Federal Register on March 21, 1995 (60 FR 14920). Our responses to those comments received regarding the proposed rule may be found in the review of comments section of this final rule.

32 CFR 199.4 lists Basic Program benefits including exclusions and limitations. Paragraph (c) defines, in general terms, the scope of reimbursable services provided by physicians and other authorized individual professional providers; paragraph (e) extends benefits under certain circumstances, to conditions and limitations that are subject to applicable definitions, conditions, or exclusions that are set forth in this or other sections of this part; and paragraph (f) identifies the liabilities, in the form of cost-shares and deductibles, to be paid by beneficiaries or sponsors.

Well-baby care: Paragraph (c)(3)(xi), provides for certain well-baby care services for infants up to the age of two years. A paragraph (c)(3)(xi)(A)(7) is added to list blood lead test as a benefit for infants. This change is effective for services provided on or after December 5, 1991.

Ambulance service: Ambulance services are covered between points deemed to be medically necessary for the covered medical condition, therefore, the restrictive language, "to, from, and between hospitals" is removed from paragraph (d)(3)(v).

Family planning: Paragraph (e)(3) provides for a family planning benefit. Paragraph (e)(3)(i)(A)(3) of this section allows benefits for prescribed oral contraceptives. With the development of new methods of contraception, prescribed contraceptives are no longer limited to those taken orally. We have, therefore, amended that paragraph by removing the word "oral" to expand the coverage accordingly.

Financial liability-deductibles: Under paragraph (f) of this section, CHAMPUS beneficiaries and sponsors have some financial responsibility when medical care is received from civilian sources. Financial liability is imposed in order to encourage use of the Uniformed Services direct medical care system whenever facilities and services are available. Beneficiaries are responsible for payment of certain deductibles and cost-sharing amounts in connection with otherwise covered services and supplies. The cost-share and deductible