

# Rules and Regulations

Federal Register

Vol. 60, No. 240

Thursday, December 14, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

---

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**7 CFR Parts 300, 301, 318–322, 330, 340, 352, 354–356, 360, and 380**

**9 CFR Parts 1–3, 49–54, 70–75, 77–80, 82, 85, 91–114, 116–118, 124, 130, 145, 147, 151, 156, 160–162, and 166–167**

[Docket No. 95–091–1]

#### Revision of Delegations of Authority

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending our regulations to reflect the recent revision of the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs and redelegation to the Administrator, Animal and Plant Health Inspection Service.

**EFFECTIVE DATE:** December 14, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Holmes, Regulatory Coordination Specialist, Regulatory Analysis and Development, PPD, APHIS, suite 3CO3, 4700 River Road Unit 118, Riverdale, MD 20737–1238, (301) 734–8682.

#### SUPPLEMENTARY INFORMATION:

##### Background

A final rule effective and published in the Federal Register on November 8, 1995 (60 FR 56392–56458) revised the delegations of authority from the Secretary of Agriculture and general officers of the Department due to a reorganization of the Department. This document amends the authority citations in titles 7 and 9 of the Code of Federal Regulations to reflect the changes made by that final rule.

Authority: 5 U.S.C. 301; 7 CFR 2.22 and 2.80.

In 7 CFR parts 300, 301, 318–322, 352, 354–356, 360, and 380 and in 9 CFR parts 1–3, 49–54, 70–75, 77–80, 82, 85, 91–114, 116–118, 124, 130, 145, 147, 151, 156, 160–162, and 166–167 the authority citations are amended by removing “7 CFR 2.17, 2.51” and adding “7 CFR 2.22, 2.80” in its place.

Done at Washington, DC, this 8th day of December 1995.

Terry L. Medley,

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95–30459 Filed 12–13–95; 8:45 am]

BILLING CODE 3410–34–M

---

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 3

[Docket No. 95–22]

RIN 1557–AB14

#### Risk-Based Capital Requirements— Small Business Loan Obligations; Correction

**AGENCY:** Office of the Comptroller of the Currency.

**ACTION:** Correction to interim rule with request for comments.

**SUMMARY:** This document contains a correction to the interim rule which was published Wednesday, September 13, 1995, (60 FR 47455). The interim rule related to the risk-based capital requirements for small business loan obligations.

**EFFECTIVE DATE:** September 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** David Thede, Senior Attorney, (202) 874–5210, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The amendatory instructions to the interim rule did not redesignate existing paragraph (c) of appendix A to part 3, section 3 as paragraph (d) before adding a new paragraph (c).

#### Correction of Publication

Accordingly, the publication on September 13, 1995 of the interim rule which was the subject of FR Doc. 95–22666, is corrected as follows:

On page 47458, in the first column, amendatory instruction 2 is corrected to read: “In appendix A to part 3, section 3 is amended by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:”.

Dated: November 30, 1995.

Eugene A. Ludwig,

*Comptroller of the Currency.*

[FR Doc. 95–30424 Filed 12–13–95; 8:45 am]

BILLING CODE 4810–33–P

---

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 906

[SPATS NO. CO–028–FOR]

#### Colorado Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving, with one exception and additional requirement, 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 and explanatory information for rules pertaining to the applicability of Colorado’s rules; permit application requirements for legal, financial, and related information; permit application requirements for operation and reclamation plans; requirements for special categories of mining; public participation and approval of permit applications; performance standards for revegetation; performance standards for subsidence control; the definition of “road;” adjustments in bond amount; the bond liability period on land reclaimed for industrial or commercial, or residential use; bond forms; terms and conditions of irrevocable letters of credit; the criteria and schedule for release of performance bonds; and erosion control on mine support facilities within areas where the pre- and postmining land use is industrial or commercial. The amendment was intended to revise the Colorado program

to be consistent with the corresponding Federal regulations, and improve operational efficiency.

**EFFECTIVE DATE:** December 14, 1995.

**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 906.11, 906.15, 906.16, and 906.30.

**II. Proposed Amendment**

By letter dated July 12, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO-670) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the proposed amendment at its own initiative, in response to a February 7, 1990, letter (administrative record No. CO-484) that OSM sent to Colorado in accordance with 30 CFR 732.17(c), and in response to a required program amendment at 30 CFR 906.16(g).

OSM announced receipt of the proposed amendment in the July 28, 1995 Federal Register (60 FR 38773), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. CO-670-4). Because no one requested a public hearing or meeting, none was held. The public comment period ended on August 28, 1995.

During its review of the proposed amendment and previously approved rules for which Colorado proposed further revisions upon promulgation, OSM identified issues and notified Colorado of the concerns by letter dated August 31, 1995 (administrative record No. CO-670-7). Colorado responded in a letter dated September 26, 1995, by submitting additional explanatory information (administrative record No. CO-670-8).

Based upon the additional explanatory information for the proposed program amendment submitted by Colorado, OSM reopened the public comment period in the October 16, 1995, Federal Register (60

FR 53562, administrative record No. CO-670-10) and provided an opportunity for a public hearing or meeting on its substantive adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 15, 1995.

**III. Director's Findings**

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with one exception and additional requirement, that the proposed program amendment submitted by Colorado on July 12, 1995, and as supplemented with additional explanatory information on September 26, 1995, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception and additional requirement, 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 2.03.7(1) (30 CFR 778.16(a)), concerning lands unsuitable for surface coal mining operations, to correctly cite the reference to 30 CFR part 769;

Rule 2.05.3(8)(c) (30 CFR 784.16(e)), concerning design of coal processing waste dams and embankments, to correctly cite the reference to Rule 4.11.5;

Rule 2.05.6(2)(iii)(A) (30 CFR 780.16(a)(2)), concerning the fish and wildlife plan in a permit application, to correctly cite the reference to Section 33-2-101 *et seq.* of the Colorado Revised Statute;

Rule 2.07.2 (30 CFR 773), concerning public participation and approval of permit applications, to remove the ".2" from "2.07.2" in the Objective title line;

Rule 3.02.4(1)(d) (30 CFR 800.12), concerning alternative bonding systems approved by the Division, to correctly cite the reference to Rule 3.02.4(2)(f);

Rule 4.08.6(1) (30 CFR 816.67(d)), concerning airblast limitations, to correctly cite the reference to Rule 4.08.4(10)(b)(i).

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed Colorado rules 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(80) (30 CFR 700.5), concerning the definition of "operator,"

Rule 1.04(92) (30 CFR 700.5), concerning the definition of "person," and

Rule 3.02.2(5) (30 CFR 800.15(c)), concerning when a permittee may request reduction of the required performance bond amount.

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 1.04(21), 2.03.3(4), and 2.06.6(2), Definition of "Coal," Water Quality Sampling and Laboratory Analyses, and Application Contents for Prime Farmland**

Colorado's proposed definition of "coal" at Rule 1.04(21) and proposed Rule 2.03.3(4), concerning water quality sampling and laboratory analyses, are substantively identical to the respective Federal regulations at 30 CFR 700.5 (definition of "coal") and 30 CFR 780.21(a), with the exception that Colorado is specifying the exact edition of "Standard Specifications for Classification of Coal by Rank" which is referenced in both State rules. Both proposed Rules 1.04(21) and 2.03.3(4) have been revised to incorporate the referenced material with the statement that "[t]his publication is hereby incorporated by reference as it exists on the date of adoption of these regulations."

Proposed Rule 2.06.6(2)(i), concerning permit application contents for prime farmland, is no less effective than 30 CFR 785.17(c). Both State and Federal rules reference the U.S. Natural Resources Conservation Service's "National Soils Handbook" for current acceptable procedures for conducting soil surveys. However, Colorado's proposed Rule 2.06.6(2)(i), which references a 1983 publication of the handbook, has been revised to state that "[t]his rule does not include later amendments to or editions of the incorporated material," and to specify that the handbook is available at, among other places, Colorado's Denver office.

OSM previously approved Colorado's existing Rule 1.01(9) (56 FR 1363, 1364, finding No. 2; January 14, 1991) which states that "[t]he materials incorporated in these rules by reference do not include later amendments to or editions of the incorporated materials." Colorado stated that this rule was necessary to

comply with the terms of Colorado's Administrative Procedures Act at Colorado Revised Statutes (C.R.S.; 1989) 24-4-103(12.5)(c). The effect of Rule 1.01(9) is that any Federal regulations or technical publications incorporated by Colorado's rules would be incorporated as they existed at the time that Colorado initially proposed its rules.

The Director is approving Colorado proposed Rules 1.04(21), 2.03.3(4), and 2.06.6(2), as no less effective than the respective counterpart Federal regulations at 30 CFR 700.5, 780.21(a), and 785.17(c). However, should revisions to these technical publications be incorporated into the Federal program, OSM would require Colorado to submit a program amendment to incorporate the revisions.

#### 4. Rule 1.04(111), Definition of "Road"

Colorado's proposed definition of "road" at Rule 1.04(111) is, with one exception, substantively identical to the Federal definition of "road" at 30 CFR 701.5. The exception is that Colorado's rule specifically excludes "public road."

The Federal definition of "road" at 30 CFR 701.5 does not address the regulation of public roads. However, as discussed below, this issue has been addressed by SMCRA, other OSM regulations, and the court.

Section 506(a) of SMCRA provides in part that " \* \* \* no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit \* \* \*" (30 U.S.C. 1256(a); emphasis added). The Federal regulations at 30 CFR 773.11(a) contain the same requirement.

Thus, under SMCRA and the corresponding Federal regulations a permit is required before a person may engage in or carry out "surface coal mining operations." Among other things, such "operations" include certain roads. Specifically, under section 701(28)(B) of SMCRA, "surface coal mining operations" include "all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities [as are specified in paragraph (A) of this section] and for haulage" (30 U.S.C. 1291(28)(B)). The Federal regulations at 30 CFR 700.5, in paragraph (b) of the definition of "surface coal mining operations," contain the same requirement.

In the development of the Federal regulations, a significant issue has been the extent to which the term "roads" in the definition of "surface coal mining operations" applies to public roads. In paragraph (c) of the Federal definition of "affected area" at 30 CFR 701.5, OSM

previously interpreted the term "affected area" as not applying to roads for which "there is substantial (more than incidental) public use" (48 FR 14814, 14819, 14822; April 5, 1983). However, that interpretation was successfully challenged in *In re Permanent Surface Mining Regulation Litigation* (In re Permanent, 620 F Supp. 1519, 1581-82 (D.D.C. 1985), modified *sub nom.*, *National Wildlife Federation v. Hodel*, 839 F.2d 694 (D.C. Cir. 1988)). The court (in *In re Permanent*) accepted the Secretary's premise that not every road when used to some degree for coal haulage or mine access falls within the definition of "surface coal mining operation." The court then noted that, presumably, when hauling or access are among many uses made of a road, such as an interstate highway, the effect from the mining use is relatively minor, and thus the road need not be included as part of the surface coal mining operation. However, the court held that the Federal definition of "affected area" went beyond what is called for in section 701(28) in exempting essentially all public roads *without regard to the degree of effect that mining use has on the road*. Therefore, the court ruled that roads experiencing substantial public use may also need to be included in the affected area *on a case-by-case basis, based on the extent of mining-related use*.

Pursuant to court order in *In re Permanent*, OSM modified its interpretation of the extent to which SMCRA applied to public roads. Specifically, OSM suspended the regulatory definition of "affected area" "to the extent that it excludes public roads which are included in the definition of 'surface coal mining operation's'" (51 FR 41952, 41953; November 20, 1986). OSM said that "[t]he suspension will have the effect of including in the 'affected area' all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the regulated activities or for haulage" (51 FR 41953; emphasis added).

In the preamble to the final rule establishing, among other things, performance standards for roads associated with surface coal mining operations (the November 8, 1988, roads rule), OSM expressed concern "that roads constructed to serve mining operations not avoid compliance with the performance standards by being deeded to public entities" (53 FR 45190, 45193; November 8, 1988). In that preamble, OSM also said that SMCRA jurisdiction over mine roads is best determined on a case-by-case basis and did not adopt a comment that "public

roads be excluded from applicability of the performance standards" (*Id.* at 45192). Thus, in determining which mining-related roads are subject to regulation, OSM currently relies on the applicable language of the Federal definitions of "surface coal mining operations" at section 701(28) of SMCRA and the Federal regulations at 30 CFR 700.5. This may require, in appropriate circumstances, that OSM and State regulatory authorities issue, and surface coal mine operators obtain, permits for certain public roads.

Colorado previously submitted on June 30, 1993, and revised on November 3, 1994, a definition of "road" and implementing policy that (1) provided for a determination of the jurisdictional reach of its approved program into the public road system, and (2) took into consideration the extent and effect of mining-related use as factors in determining whether a road is subject to the requirement for a permit, as contemplated by the Federal regulations (administrative record Nos. CO-552 and CO-587). The Director of OSM approved on June 1, 1994 (59 FR 28248, administrative record No. CO-624), Colorado's definition of "road" at Rule 1.04(111), as supplemented by the implementing policy for determining when a public road would fall under the jurisdiction of its program.

Colorado's proposed definition of "road" at Rule 1.04(111) now under review unconditionally excludes all "public roads" from regulation as a road under Colorado's rules and is, therefore, less stringent and less effective than, respectively, the Federal definitions of "surface coal mining operations" at section 701(28) of SMCRA and at 30 CFR 700.5 of the Federal regulations. The Director does not approve Colorado's unconditional exemption for public roads at Rule 1.04(111). To be consistent with SMCRA and the Federal regulations, Colorado must revise the definition of "road" at Rule 1.04(111) to either delete the exemption for public roads or qualify the exemption for public roads to consider the degree of effect that mining use has on the road.

#### 5. Rules 104(132) and 1.05.1(1), Definition of "Surface Coal Mining Operations" and Applicability of Colorado's Rules

a. *Deletion of allowance for a 2-acre exemption.* Colorado proposed to revise Rule 1.05.1(1)(b), concerning applicability of the Colorado program, to delete allowance for an exemption for operations affecting 2-acres or less.

As originally enacted, section 528(2) of SMCRA exempted from the provisions of SMCRA coal extraction

operations affecting 2 acres or less. However, on May 7, 1987, the President signed Pub. L. 100-34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987).

Colorado's proposed deletion of reference to a 2-acre exemption at Rule 1.05.1(1)(b) is consistent with SMCRA as amended to delete the 2-acre exemption. Therefore, the Director finds that the deletion of the 2-acre exemption from Rule 1.05.1(1)(b) is no less stringent than SMCRA as amended by Public Law 100-34 and approves it.

*b. Deletion of the allowance for an exemption for extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and 2/3 percent of the mineral tonnage removed for commercial use or sale.*

Colorado proposed to revise the definition of "surface coal mining operations" at Rule 104(132) and Rule 1.05.1(1)(b), concerning applicability of the Colorado program, by deleting an exemption from the Colorado program for the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and 2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale.

The counterpart Federal definition of "surface coal mining operations" at 30 CFR 700.5 and provisions for applicability of the Federal program at 30 CFR 700.11(a)(4) include provisions for this exemption. However, because Colorado's deletion of this provision means that the Colorado program would regulate operations extracting coal incidental to the extraction of other minerals where coal does not exceed 16 and 2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, Colorado's deletion of the provision causes its program to be more inclusive of operations to be regulated than does the Federal program.

The Director finds that proposed Rules 104(132) and 1.05.1(1)(b) are no less effective than the respective Federal regulations at 30 CFR 700.5 and 700.11(a)(4). The Director approves the proposed rules.

*6. Rule 2.05.3(3)(c)(iv), Permit Application Requirements in the Operations Plan for Roads, Conveyors, or Rail Systems Within the Permit Area*

Colorado's proposed Rule 2.05.3(3)(c)(iv), concerning the required description in a permit application of the measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert for roads, conveyors, or rail systems within the

permit area, has been revised to reference approval of the culvert design under Rule 4.03.1(4)(e)(vi)(C). Referenced Rule 4.03.1(4)(e)(vi)(C) requires approval of drainage by culverts for haul roads.

The Federal regulations at 30 CFR 780.37(a)(1) and 784.24(a)(1) require that "[e]ach applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in Sec. 701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall "[i]nclude a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures." There is no Federal counterpart to Colorado's requirement for descriptions of measures to protect the inlet end of a ditch relief culverts for roads, conveyors, or rail systems within the permit area. The Federal regulations concerning permit applications pertain to all roads but include only a general requirement for design of culverts. However, this specificity in the Colorado rule does not cause it to be inconsistent with the Federal regulations and ensures a greater degree of environmental protection than does the Federal regulation.

Therefore, the Director finds that Colorado's proposed Rule 2.05.3(3)(c)(iv) is no less effective than the Federal regulations at 30 CFR 780.37(a)(1) and 784.24(a)(1), and approves the proposed rule.

*7. Rules 2.06.8(5)(c)(i) (A) and (B), Criteria for Determining Material Damage to Water Quality or Quantity in Alluvial Valley Floors*

Colorado's existing Rule 2.06.8(5)(c)(i) specifies specific conductance, which affects water quality and crop production, as the particular factor to evaluate to determine whether material damage to surface or ground water systems has occurred. The existing rule requires that specific conductance be measured by "Maas, E.V., 'Salt Tolerance of Plants,' Tables 2 and 3." Colorado proposes to delete from Rules 2.06.8(5)(c)(i) (A) and (B) the requirement for the use of Maas' publication to set crop salt tolerance threshold values. Instead, Colorado proposes that published research or testing be used to establish the salt tolerance threshold values for specific crop yields. Colorado's proposed rules further require that probable increases in specific conductance of water

supplied to an alluvial valley floor shall not exceed the salt tolerance threshold value of any crop grown on the alluvial valley floor, unless the applicant demonstrates that the projected decrease in productivity is negligible to the production of one or more farms.

The Federal regulations at 30 CFR 822.12(a)(2) essentially prohibit mining operations from causing material damage to the quality or quantity of surface or ground water systems that supply alluvial valley floors. The Federal regulations are more general in scope than Colorado's rules, simply stating that water in alluvial valleys shall not be materially damaged by mining. The Federal regulations do not state how to determine that material damage has occurred. Colorado's proposed Rules 2.06.8(5)(c)(i) (A) and (B) set forth a technically acceptable method for evaluating whether a mining operation will damage the water system of an alluvial valley floor.

Therefore, the Director finds that Colorado's proposed Rules 2.06.8(5)(c)(i) (A) and (B) are consistent with and no less effective than the Federal regulations at 30 CFR 822.12(a)(2). The Director approves the proposed rules.

*8. Rule 3.02.3(c), Bond Liability Period for Lands With Approved Industrial or Commercial, or Residential Post-mining Land Use*

OSM required, at 30 CFR 906.16(g), that Colorado amend its program by revising Rule 3.02.3(c) to require that prior to release of bond liability, the permittee must demonstrate that development of the industrial, commercial, or residential land use has substantially commenced and is likely to be achieved (59 FR 62574, 62577, finding No. 6.a, December 6, 1994, administrative record No. CO-650).

In response to this required amendment, Colorado proposed to revise Rule 3.02.3(c), concerning the bond liability period for lands with approved industrial or commercial, or residential post-mining land use, by adding the phrase "until the permittee demonstrates that development of such land use has substantially commenced and is likely to be achieved."

Colorado has satisfied the requirement at 30 CFR 906.16(g). Therefore, the Director finds that Colorado's proposed Rule 3.02.3(c) is consistent with and no less effective than the broad requirements of the Federal regulations at 30 CFR 800.13(a)(1), 816.116(b)(4), 816.133(c), 817.116(b)(4), and 817.133(c). The Director approves proposed Rule

3.02.3(c) and removes the required amendment at 30 CFR 906.16(g).

**9. Rules 3.02.4(1), 3.02.4(1)(b), and 3.02.4(2)(c)(ix), Bond Forms**

a. *Allowance for use of real property as collateral bond.* Colorado proposed to revise Rule 3.02.4(1) by adding the discretionary allowance, upon approval of the Board, for "conditioned acceptance of performance bonds as described in 3.02.4(2)(c)(ix)." Colorado also proposed to reinstate the previously deleted Rule 3.02.4(2)(c)(ix), concerning use of a perfected first-lien security interest in real property located in Colorado, and to recodify existing Rule 3.02.4(2)(c)(ix), concerning a person's right to request notification of actions pursuant to collateral bonds, as Rule 3.02.4(2)(c)(x). The effect of these revisions is to allow real property as an allowable form of collateral bond in the Colorado program.

The Federal definition of "collateral bond" at 30 CFR 800.5(b)(5) provides that a perfected, first-lien security interest in real property, in favor of the regulatory authority, may be used to support a collateral bond. The Federal regulations at 30 CFR 800.21(c) set forth the conditions applicable to the use of real property as collateral bond.

Colorado's proposed Rules 3.02.4(1) and 3.02.4(2)(c)(ix) are no less effective than the Federal regulations at 30 CFR 800.21(c). Therefore, the Director approves proposed Rules 3.02.4(1) and 3.02.4(2)(c)(ix), and the recodification of 3.02.4(2)(c)(ix) as 3.02.4(2)(c)(x).

b. *Clarification of requirements pertaining to collateral bonds.* Colorado proposed to revise Rule 3.02.4(1)(b), concerning the allowance for collateral bonds, by adding a reference to Rules 3.02.4(2)(c) and (d). Existing Rule 3.02.4(2)(c) contains requirements for all collateral bonds, and existing Rule 3.02.4(2)(d) contains requirements for an irrevocable letters of credit, which is a form of collateral bond specified in Rule 3.02.4(1)(b). The reference provides clarification that collateral bonds are indeed subject to Rules 3.02.4(2)(c) and (d), but does not substantively alter the implementation of the rules.

The Federal regulations at 30 CFR 800.12 provide for the use of a surety bond, a collateral bond, a self-bond, or a combination of any of these bonding methods. The Federal regulations at 30 CFR 800.21(a) sets forth the conditions applicable to collateral bonds, except for letters of credit, cash accounts, and real property. The Federal regulations at 30 CFR 800.21(b) sets forth the conditions applicable to letters of credit. There is no reference at 30 CFR 800.12 to the

conditions applicable to each bond form.

The Director finds that Colorado's revision of Rule 3.02.4(1)(b) to reference the conditions set forth at Rules 3.02.4(2)(c) and (d) provides a degree of specificity that is no less effective than the Federal regulations at 30 CFR 800.12 and 800.21(a) and (b). The Director approves the proposed rule.

**10. Rule 3.02.4(d)(i), Irrevocable Letters of Credit**

Colorado proposed to revise Rule 3.02.4(d)(i), concerning irrevocable letters of credit, by modifying the requirement that the letter may only be issued by a bank organized or authorized to do business in the United States "and located in the state of Colorado," to state that "the bank need not be located in the state of Colorado if the letter of credit can be exercised at an affiliate or subsidiary located in the State of Colorado."

The counterpart Federal regulation at 30 CFR 800.21(b)(1) requires that letters of credit "may be issued only by a bank organized or authorized to do business in the United States."

Colorado's proposed Rule 3.02.4(d)(i) provides requirements for letters of credit as forms of collateral bond that are in addition to those provided in the Federal program, but that are not inconsistent with the Federal regulations at 30 CFR 800.21(b)(1). The Director finds that proposed Rule 3.02.4(d)(i) is no less effective than the Federal regulation at 30 CFR 800.21(b)(1). The Director approves the proposed rule.

**11. Rule 3.03.1(2)(b), Requirements for Establishment of Vegetation Which Must Be Demonstrated Prior to Phase II Bond Release**

Colorado proposed to revise Rule 3.03.1(2)(b), concerning requirements for establishment of vegetation which must be demonstrated prior to phase II bond release, to (1) delete the requirement that vegetation must "exhibit[s] seasonality and species composition consistent with the ultimate achievement of the success standards" and (2) add the requirement that vegetation must "support[s] the approved postmining land use."

The seasonality and species composition of vegetation is determined by the approved postmining land use. In effect, Colorado has restated the requirement using somewhat broader language. The counterpart Federal regulation at 30 CFR 800.40(c)(2) does not contain this level of specificity as it refers only to "revegetation [that] has been established on the regraded mined

lands in accordance with the approved reclamation plan." Colorado's existing Rule 4.15.8(2) requires that vegetative cover be evaluated for determination of revegetation success; it also requires that the seasonality be the same as that native to the disturbed land or that which supports the approved postmining land use. Therefore, the requirement (for demonstration at phase II bond release) that the vegetation must support the approved postmining land use is consistent with the Federal regulation at 30 CFR 800.40(c)(2) and is consistent with Colorado's requirement at Rule 4.15.8(2) for final determination of revegetation success.

Colorado also proposed to review Rule 3.03.1(2)(b) by adding the requirement that "with the exception of prime farmlands, evaluation of vegetation establishment pursuant to this paragraph is based on statistically valid data collected during a single year of the liability period." This requirement ensures that data collected over several years and averaged, which may compromise the validity of the demonstration, could not be used.

The Federal regulations at 30 CFR 800.40(c)(2), with the exception of the reference to other regulations concerning prime farmlands, do not address a time period during which the data used to demonstrate establishment of revegetation is collected at phase II bond release. Colorado's addition of the requirement that, with the exception of prime farmlands, the data must be collected during a single year is not inconsistent with the Federal regulations.

Therefore, the Director finds that Colorado's proposed revisions of Rule 3.03.1(2)(b) are no less effective than the counterpart requirements in the Federal regulations at 30 CFR 800.40(c)(2). The Director approves the proposed rule.

**12. Rule 4.15.10(3), Mine Support Facilities and Commercial or Industrial Postmining Land Use Designations**

Colorado proposed to review Rule 4.15.10(3), concerning a variance from the requirement for living ground cover to control erosion for mine support facilities located within areas where the pre- and postmining land use is industrial or commercial, by deleting the requirement that the permittee demonstrate that "retention of mine support facilities will support the approved post-mining land use."

OSM previously approved Rule 4.15.10(3) (59 FR 62574, 62578, finding No. 6.b, December 6, 1994, administrative record No. CO-650) as submitted by Colorado on April 18, 1994 (administrative record No. CO-

611). Colorado, in its "Statement of Basis, Specific Statutory Authority, and Purpose," for the April 18, 1994, submission, cited the example of an pre-existing rail loadout facility, and stated that in such limited cases, living ground cover could be in conflict with the proposed use and alternative erosion control measures such as gravel surfacing and appropriate site grading would effectively control erosion. While there is no Federal counterpart to the variance proposed in Rule 4.15.10(3), OSM found that it was consistent with OSM's ten day notice appeal decisions and did not conflict with any Federal requirement. However, OSM is concerned that deletion of the required demonstration that "retention of mine support facilities will support the approved post-mining land use" may be interpreted to allow the retention of mine support facilities when they do not support the approved commercial or industrial postmining land use.

The Federal regulations at 30 CFR 816.133(a) and 817.133(a) require that all disturbed areas shall be restored in a timely manner to conditions that are capable of supporting either (1) the uses they were capable of supporting before any mining, or (2) higher or better uses.

Because Colorado's example discussed in its April 18, 1994, "Statement of Basis, Specific Statutory Authority, and Purpose" does not conflict with the requirements of the Federal regulations at 30 CFR 816.133(a) and 817.133(a), Colorado's proposed revision of Rule 4.15.10(3) does not cause it to be less effective than the requirements of the Federal regulations at 30 CFR 816.133(a) and 817.133(a). Therefore, the Director approves the proposed Rule 4.15.10(3). However, the Director's approval may not be interpreted to allow retention of mine support facilities when they do not support the approved commercial or industrial postmining land use.

### 13. Rule 4.20.3(2), Subsidence-Caused Damages

Colorado proposed to revise Rule 4.20.3(2) to require that each person who conducts underground mining activities which result in subsidence that causes material damage or reduces the value or reasonably foreseeable use of surface lands shall:

(a) Promptly restore or rehabilitate any renewable resource lands for which the value or reasonably foreseeable use has been reduced or which have been materially damaged. Such lands shall be restored or rehabilitated to a condition capable of maintaining the value and reasonably foreseeable and appropriate uses they were capable of supporting before subsidence, to

the extent technologically and economically feasible.

(b)(i) Promptly repair, rehabilitate, restore, or replace damaged occupied residential dwellings and related structures or noncommercial buildings; or (ii) Compensate the owner of the damaged occupied residential dwelling and related structure or noncommercial building in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable, premium-prepaid insurance policy.

(c) Nothing in 4.20.3 shall be deemed to grant or authorize an exercise of power of condemnation or the right of eminent domain by any person engaged in underground mining activities.

Colorado's proposed Rules 4.20.3(2)(a) through (c), concerning repair of damage to renewable resource lands and repair or compensation of damage to occupied residential dwellings and related structures or noncommercial buildings, incorporate, in part, the revised provisions of the Federal regulations at 30 CFR 817.121 concerning subsidence-caused damages.

Colorado's proposed Rule 4.20.3(2)(a), concerning repair of damage to renewable resource lands, is no less effective than the Federal regulations, concerning repair of damage to surface lands, at 30 CFR 817.121(c)(1). Colorado's proposed Rules 4.20.3(2)(b)(i) and (ii) are no less effective than the Federal regulations, concerning repair or compensation of damage to occupied residential dwellings and related structures or noncommercial buildings, at 30 CFR 817.121(c)(2). Colorado's rules do not include the October 24, 1992, date, as do the Federal regulations at 30 CFR 817.121(c)(2), after which the Federal regulation became effective. This is not an issue because Colorado received no legitimate complaints, with respect to this issue, between October 24, 1992, and August 1, 1995, the promulgation effective date of this proposed rule. There is no Federal counterpart to Colorado's proposed Rule 4.20.3(2)(c), concerning powers of condemnation or right of eminent domain by any person engaged in underground mining activities. However, this rule is not inconsistent with the Federal regulations.

For these reasons, the Director finds that Colorado's proposed Rules 4.20.3(2)(a) through (c) are no less effective than the Federal regulations at 30 CFR 817.121(c)(1) and (2) and approves them.

However, the Director notes that Colorado lacks certain counterpart provisions to the Federal regulations that were promulgated on March 31, 1995 (60 FR 16722). Colorado lacks (1)

definitions for "material damage," "non-commercial building," and "occupied residential dwelling and structures related thereto;" (2) rules concerning the conditional requirement to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto; (3) rules concerning repair or compensation according to State law of all other structures; (4) rules concerning rebuttable presumption of causation by subsidence and adjustment of bond amount for subsidence damage; and (5) counterparts to the Federal regulations concerning permitting requirements for the presubsidence survey and the subsidence control plan.

In a future 30 CFR Part 732 letter, OSM will notify Colorado of the additional revisions in its program that are necessary to be no less effective than the revised March 31, 1995, Federal regulations concerning subsidence-caused damages.

### 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. Fish and Wildlife Service responded on July 24, 1995, that it had no comments on the proposed amendment, and on October 31, 1995, that due to budgetary constraints it was unable to comment on the proposed amendment (administrative record Nos. CO-670-2 and CO-670-14).

The U.S. Army Corps of Engineers responded on August 1 and October 25, 1995, that Colorado's proposed revisions were satisfactory (administrative record Nos. CO-670-3 and CO-670-12).

The U.S. Forest Service responded on August 17 and November 11, 1995, that it had no comments on Colorado's proposed amendment (administrative record No. CO-670-5 and CO-670-15).

The U.S. Mine Safety and Health Administration (MSHA) responded on October 24, 1995, that Colorado's

proposed amendment did not conflict with current MSHA standards (administrative record No. CO-670-11).

The U.S. Natural Resources Conservation Service responded on October 31, 1995, that it had no comments on Colorado's proposed amendment (administrative record No. CO-670-13).

### 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-670-1). 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-670-1). Neither the SHPO nor ACHP responded to OSM's request.

### V. Director's Decision

Based on the above findings, the Director approves, with one exception and additional requirement, Colorado's proposed amendment as submitted on July 12, 1995, and as supplemented with additional explanatory information on September 26, 1995.

With the requirement that Colorado further revise the definition of "road" at Rule 1.04(111), the Director does not approve, as discussed in finding No. 4, the unconditional exemption for regulation of public roads under Colorado's approved program.

The Director approves, as discussed in:

Finding No. 1, Rules 2.03.7(1), 2.05.3(8)(c), 2.05.6(2)(iii)(A), 2.07.2, 3.02.4(1)(d), and 4.08.6(1), concerning nonsubstantive revisions to previously approved rules that consist of editorial revisions;

Finding No. 2, Rules 1.04(80), 1.04(92), and 3.02.2(5), concerning substantive revisions to previously

approved rules that are substantively identical to the Federal regulations;

Finding No. 3, Rules 1.04(21), 2.03.3(4), and 2.06.6(2), concerning the definition of "coal," water quality sampling and laboratory analyses, and application contents for prime farmland;

Finding No. 5, Rules 104(132) and 1.05.1(1), concerning the definition of "surface coal mining operations" and the applicability of Colorado's rules;

Finding No. 6, Rule 2.05.3(3)(c)(iv), concerning permit application requirements in the operations plan for roads, conveyors, or rail systems within the permit area;

Finding No. 7, Rules 2.06.8(5)(c)(i) (A) and (B), concerning criteria for determining material damage to water quality or quantity in alluvial valley floors;

Finding No. 8, Rule 3.02.3(c), concerning bond liability period for lands with approved industrial or commercial, or residential post-mining land use;

Finding No. 9, Rules 3.02.4(1), 3.02.4(1)(b), and 3.02.4(2)(c)(ix), concerning bond forms;

Finding No. 10, Rule 3.02.4(d)(i), concerning irrevocable letters of credit;

Finding No. 11, Rule 3.03.1(2)(b), concerning requirements for establishment of vegetation which must be demonstrated prior to phase II bond release;

Finding No. 12, Rule 4.15.10(3), concerning mine support facilities and commercial or industrial postmining land use designations as augmented by Colorado's April 18, 1994, "Statement of Basis, Specific Statutory Authority, and Purpose;" and

Finding No. 13, Rule 4.20.3(2), concerning subsidence-caused damages.

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.

### Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal

regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Colorado program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Colorado of only such provisions.

### 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 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (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 of 1969 (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.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 5, 1995.

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 (s) to read as follows:

**§ 906.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(s) With the exception of Rule 1.04(111), concerning the exemption for public roads in the definition of "road," revisions to the following rules, as submitted to OSM on June 12, 1995, and as supplemented with explanatory information on September 26, 1995, are approved effective December 14, 1995: Definition of "coal"—Rule 1.04(21), Definition of "operator"—Rule 1.04(80), Definition of "person"—Rule 1.04(92), Definition of "road"—Rule 1.04(111), Definition of "surface coal mining operations"—Rule 104(132), Applicability of the Colorado program—Rule 1.05.1(1)(b), Water quality sampling and laboratory analyses—Rule 2.03.3(4), Lands unsuitable for surface coal mining operations—Rule 2.03.7(1), Permit application information regarding the measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief

culvert for roads, conveyors, or rail systems within the permit area—Rule 2.05.3(3)(c)(iv),

Design of coal processing waste dams and embankments—Rule 2.05.3(8)(c),

Permit application contents of the fish and wildlife plan—Rule 2.05.6(2)(iii)(A),

Permit application contents for prime farmland—Rule 2.06.6(2),

The use of published research or testing to establish the salt tolerance threshold values for specific crop yields in order to assess material damage to the quality or quantity of surface or ground water systems that supply alluvial valley floors—Rules 2.06.8(5)(c)(i) (A) and (B),

Public participation and approval of permit applications—Rule 2.07.2,

Reductions in the required performance bond amount—Rule 3.02.2(5),

Bond liability period for lands with approved industrial or commercial, or residential post-mining land use—Rule 3.02.3(c),

Bond forms—Rule 3.02.4(1), 3.02.4(1)(b), and 3.02.4(2)(c)(ix),

Alternative bonding systems—Rule 3.02.4(1)(d),

Irrevocable letters of credit—Rule 3.02.4(d)(i),

Requirements for establishment of vegetation which must be demonstrated prior to phase ii bond release—Rule 3.03.1(2)(b),

Airblast limitations—Rule 4.08.6(1),

Mine support facilities and commercial or industrial postmining land use designations—Rule 4.15.10(3), as augmented by Colorado's April 18, 1994, "Statement of Basis, Specific Statutory Authority, and Purpose," and

Subsidence-caused damages—Rule 4.20.3(2).

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

**§ 906.16 Required program amendments.**

\* \* \* \* \*

(h) By February 12, 1996, Colorado shall revise Rule 1.04(111), to delete the exemption for regulation of public roads under Colorado's program, or otherwise modify its program to qualify the exemption for public roads to consider the degree of effect that mining use has on the road.

[FR Doc. 95-30331 Filed 12-13-95; 8:45 am]  
BILLING CODE 4310-05-M

**ASSASSINATION RECORDS REVIEW BOARD**

**36 CFR Part 1415**

**Rules Implementing the Privacy Act**

**AGENCY:** Assassination Records Review Board.

**ACTION:** Final rulemaking.

**SUMMARY:** This part contains the regulations of the Assassination Records Review Board (Review Board) implementing the Privacy Act of 1974. The regulations inform the public that the Review Board is responsible for carrying out the provisions of the Privacy Act and for issuing internal Review Board orders and directives in connection with the Privacy Act. These regulations apply to all records that are contained in systems of records maintained by the Review Board and that are retrieved by an individual's name or personal identifier. Elsewhere in today's Federal Register appears a notice describing the Review Board's systems of records.

**EFFECTIVE DATE:** This regulation is effective January 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** T. Jeremy Gunn, General Counsel, Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, DC 20530.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 3(f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), requires each Federal agency to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information. The Review Board, established by the President John F. Kennedy Assassination Records Collection Act of 1992, is therefore obligated to publish such regulations.

Because Privacy Act regulations are intended for use by the general public, the Review Board has tried to keep its rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Review Board's internal procedures and safeguards may be dealt with by directive to the Review Board's staff rather than by rule.

**Notice and Comment Process**

The Review Board received no public comments in response to its Notice of Proposed Rulemaking. The staff, in consultation with the Office of Management and Budget, proposed some technical amendments to the regulations. The following changes have been incorporated into the final rule: