

(t), and (u) and by adding paragraphs (w), (x), and (y) to read as follows:

§ 913.16 Required program amendments.

* * * * *
(s)-(u) [Reserved]
* * * * *

(w) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the regulation provisions at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(f)(i), concerning the authority to approve augmentative practices without restarting the period of extended responsibility for revegetation success and bond liability for pasture, hayland, and grazing land, from Chapter I, Title 62 of the Illinois Administrative Code.

(x) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the regulations at 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres that would not require statistically valid sampling techniques be used to evaluate success of revegetation, from Chapter I, Title 62 of the Illinois Administrative Code.

(y) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the provision at 62 IAC 1816.116(a)(4)(A)(ii), concerning revegetation success for a larger field being representative of the revegetation success of a non-contiguous reclaimed area less than or equal to four acres, from Chapter I, Title 62 of the Illinois Administrative Code.

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30 CFR Part 931

[SPATS No. NM-036-FOR]

New Mexico Regulatory Program

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

ACTION: Final rule; approval of amendment with one exception and additional requirements.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with one exception and additional requirements, a proposed

amendment to the New Mexico regulatory program (hereinafter referred to as the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed revisions to and/or additions of rules pertaining to definitions; procedures for designating lands unsuitable for coal mining; permit application requirements concerning compliance information, the reclamation plan, and the subsidence information and control plan; procedures concerning permit application review; criteria for permit approval or denial; procedures concerning improvidently issued permits; permit conditions; requirements concerning ownership and control information; and performance standards for coal exploration, hydrologic balance, permanent and temporary impoundments, coal processing waste, disposal of noncoal waste, protection of fish, wildlife, and related environmental values, revegetation success, subsidence control, and roads. The amendment was intended to revise the New Mexico program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248-5070.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, Federal Register (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated January 22, 1996, New Mexico submitted a proposed amendment to its program (administrative record No. NM-766) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment at its own initiative and in response to the required program amendments at 30

CFR 931.16 (a), (c), (d), (f) through (p), and (n)(2) through (s) (55 FR 48841, November 23, 1990; 56 FR 67520, December 31, 1991; and 58 FR 65907, December 17, 1993).

OSM announced receipt of the proposed amendment in the February 1, 1996, Federal Register (61 FR 3625), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM-767). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 4, 1996.

During its review of the amendment, OSM identified concerns relating to the certain provisions of the proposed amendment. OSM notified New Mexico of the concerns on March 13, 1996 (administrative record No. NM-774).

New Mexico responded on March 13, 1996, that it would not submit revisions to the amendment and that OSM should proceed with the publishing of this final rule Federal Register notice (administrative record No. NM-774).

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with certain exceptions and additional requirements, that the proposed program amendment submitted by New Mexico on January 22, 1996, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception, the proposed amendment and adds additional requirements.

1. Nonsubstantive Revisions to New Mexico's Rules

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

Coal Surface Mining Commission (CSMC) Rule 80-1-11-20(d) (30 CFR 773.20(c)), concerning remedial measures for improvidently issued permits, to recodify existing CSMC Rule 80-1-11-20(c) as CSMC Rule 80-1-11-20(d);

CSMC Rule 80-1-20-41(e)(3)(i) (30 CFR 816.41 (c)(3) and (e)(3) and 817.41 (c)(3) and (e)(3)), concerning general performance standard requirements for protection of the hydrologic balance, to correctly reference CSMC 80-1-20-41(e)(2)(i); and

CSMC Rule 80-1-20-82(a)(4) (30 CFR 816.71(h) and 817.71(h)), concerning inspections of coal processing waste banks, to correctly reference "Part 9" of New Mexico's rules.

CSMC Rule 80-1-20-89(d)(2) (30 CFR 816.89(b)), concerning disposal of noncoal

wastes, to correctly reference "Section 3-109D" of the New Mexico Water Quality Control Commission regulations.

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

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

New Mexico proposed revisions to or additions of 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).

CSMC Rule 80-1-1-5 (30 CFR 773.5), concerning the definitions of "Applicant/violator system or AVS," "Federal violation notice," "Ownership or control link," "State violation notice," and "Violation notice;"

CSMC Rule 80-1-1-5 (30 CFR 700.5), concerning the definition of "OSM;"

CSMC Rules 80-1-1-5 (30 CFR 701.5), concerning the definition of "Road;"

CSMC Rules 80-1-11-20(c) (1) and (2) and (e) (30 CFR 773.20(b)(2) (i) and (ii) and (c)(2)), concerning general procedures for imprudently issued permits;

CSMC 80-1-11-24(a) and [deletion of] (c) (30 CFR 773.21(a)), concerning rescission procedures for imprudently issued permits;

CSMC Rule 80-1-11-31 (a) through (d) (30 CFR 773.22 (a) through (d)), concerning verification of ownership or control application information;

CSMC Rule 80-1-11-32 (a) through (c) (30 CFR 773.23 (a) through (c)), concerning review of ownership or control and violation information;

CSMC Rule 80-1-11-33 (a) through (d) (30 CFR 773.24 (a) through (d)), concerning procedures for challenging ownership or control links shown in AVS; and

CSMC Rule 80-1-11-34 (a) through (d) (30 CFR 773.25 (a) through (d)), concerning standards for challenging ownership or control links and the status of violations.

Because these proposed New Mexico 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. CSMC Rule 80-1-1-5, Definition of "Qualified Laboratory"

At its own initiative, New Mexico proposed a definition of "Qualified laboratory" at CSMC Rule 80-1-1-5 that is, with one exception, substantively identical to the Federal definition of "qualified laboratory" at 30 CFR 795.3. The exception is that New Mexico's

definitions only provides for laboratory services related to the determination of probable hydrologic consequences or statement of results of test borings or core samplings under the new Mexico small operator assistance program (SOAP), where as the Federal definition provides for these and other services specified at 30 CFR 795.9.

New Mexico's CSMC Rule 80-1-32-9, which corresponds to 30 CFR 795.9 in the Federal regulations, has not been revised to include the additional services which can be funded under the Federal SOAP program (59 FR 28168, May 31, 1994). However, a State's implementation of SOAP is not mandated by SMCRA nor the Federal regulations and the provisions for SOAP funding may, to the extent provided for in the Federal program, be elected by the State.

Therefore, the Director finds that New Mexico's definition of "Qualified laboratory" at CSMC Rule 80-1-1-5 is no less effective than the Federal definition of "qualified laboratory" at 30 CFR 795.3 and approves the proposed definition of "Qualified laboratories" at CSMC 80-1-1-5.

4. CSMC Rules 80-1-1-5 and 80-1-7-14(c) (1) through (5), Ownership and Control Information Required in Permit Applications Concerning Violations

OSM required at 30 CFR 931.16(d) that New Mexico revise CSMC Rule 80-1-7-14(c) to add the requirement that a permit application include information on violations received pursuant to SMCRA, its implementing regulations, and to any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA (finding No. 4, 58 FR 65907, 65909, December 17, 1993).

New Mexico proposed to revise CSMC Rules 80-1-7-14(c) (1) through (5), concerning compliance information required in permit applications, to include requirements that are, with one exception, substantively identical to the Federal regulations at 30 CFR 778.14(c) (1) through (5).

The exception is that New Mexico requires information concerning violations received pursuant to SMCRA. New Mexico proposed, at CSMC Rule 80-1-1-5, to add a definition of "SMCRA" which means, in addition to the Federal act, its implementing regulations at 30 CFR Chapter VII, and any State or Federal law, rule, regulation, or program enacted or promulgated pursuant to the Federal act.

The corresponding Federal regulations at 30 CFR 778.14(c) require information concerning violations received pursuant to SMCRA, its

implementing regulations, and to any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA. As defined by New Mexico, the use of the term "SMCRA" in proposed CSMC Rules 80-1-7-14(c) is equivalent to the use, in the Federal regulations, of the phrase "SMCRA, its implementing regulations, and any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA."

Based upon the above discussion, the Director finds that proposed CSMC Rules 80-1-7-14(c) (1) through (5) and the term "SMCRA," as proposed at CSMC Rule 80-1-1-5, (1) are consistent with and no less effective than the Federal regulations at 30 CFR Part 778.14(c) (1) through (5), concerning compliance information required in permit applications, and (2) satisfy the required amendment at 30 CFR 931.16(d). The Director approves proposed CSMC Rules 80-1-7-14(c) (1) through (5) and the proposed definition of "SMCRA" at CSMC Rule 80-1-1-5, and removes the required amendment at 30 CFR 931.16(d).

5. CSMC Rule 80-1-1-5, Definitions of "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," and "Replacement of water supply" and CSMC Rules 80-1-20-121, 124, 125, and 127, Performance Standards Concerning the Subsidence Information and Control Plan

At 30 CFR 931.16(s), OSM required that New Mexico revise CSMC Rule 80-1-20-124 to require that an operator (1) repair or compensate for subsidence-related material damage to structures and facilities, (2) correct, by restoring the land to the extent technologically and economically feasible, any material damage resulting from subsidence caused to surface lands, (3) require an operator to either repair or compensate the owner in full regardless of the extent of operator liability under State law for any subsidence-related damage occurring after October 24, 1992, to occupied residential dwellings, structures related thereto, and noncommercial buildings, and (4) remove the inconsistency with proposed CSMC Rule 80-1-9-39(c) with regard to limiting to the extent required under State law, an operator's obligation to remedy subsidence-related material damage to structures and facilities (finding No. 19, 58 FR 65907, 65922, December 17, 1993).

In response to these required amendments, New Mexico proposed to delete its existing rules at CSMC Rule 80-1-20-121 and 124 and add rules that incorporate the definitions and

performance standards pertaining to the repair of subsidence-caused damages that were promulgated on March 31, 1995, in the Federal program at 30 CFR 701.5 and 817.121 (60 FR 16749).

a. *CSMC Rule 80-1-1-5, Definitions of "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," and "Replacement of water supply."* New Mexico proposed to revise CSMC Rule 80-1-1-5 by adding definitions for "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," and "Replacement of water supply." These proposed definitions are substantively identical, with one exception, to the counterpart Federal definitions at 30 CFR 701.5.

The exception concerns a reference to the performance standards pertaining to repair of subsidence-caused damages in the proposed definitions of "Material damage" and "Occupied residential dwelling and structures related thereto." The Federal definitions of "material damage" and "occupied residential dwelling and structures related thereto" reference the Federal regulations at 30 CFR 780.20 and 817.121. The New Mexico rules that correspond to the Federal regulations at 30 CFR 817.121 are proposed CSMC Rules 80-1-9-39 and 80-1-20-121, 124, 125, and 127 (discussed below); however, New Mexico's proposed definitions of "Material damage" and "Occupied residential dwelling and structures related thereto" reference only New Mexico's CSMC Rules 80-1-9-39 and 80-1-20-124.

The Director finds that, with the exception of the reference to the performance standards pertaining to repair of subsidence-caused damages at CSMC Rule 80-1-20-124 in the proposed definitions of "Material damage" and "Occupied residential dwelling and structures related thereto," New Mexico's proposed definitions at CSMC 80-1-1-5 for "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," and "Replacement of water supply" are no less effective than the corresponding Federal definitions at 30 CFR 701.5. The Director approves these proposed definitions at CSMC 80-1-1-5, but is adding a new requirement that New Mexico further revise the definitions of "Material damage" and "Occupied residential dwelling and associated structures" at CSMC 80-1-1-5 to

include references to CSMC Rules 80-1-20-121, 125, and 127.

b. *CSMC Rules 80-1-20-121, 124, 125, and 127, Performance standards concerning the subsidence information and control plan.* New Mexico proposed to add the following performance standards pertaining to subsidence that are, with one exception, substantively identical to the corresponding Federal regulations (in parentheses):

CSMC Rules 80-1-20-121 (a) through (d) (30 CFR 817.121(a) (1)-(3) and 817.121(b)), concerning general requirements for subsidence control;

CSMC Rules 80-1-20-124 (a) through (d) (30 CFR 817.121(c)(1), 817.41(j), and 817.121(c)(2) and (c)(3)), concerning surface owner protection and restoration, replacement, repair, or compensation of subsidence-caused damages;

CSMC Rules 80-1-20-125 (a) through (e) (30 CFR 817.121 (c)(4)(i) through (c)(4)(v)), concerning rebuttable presumption of causation by subsidence; and

CSMC Rule 80-1-20-127 (30 CFR 817.121(c)(5)), concerning the requirement to adjust the bond amount for subsidence damage.

The exception concerns New Mexico's proposed requirement at CSMC 80-1-20-127 to adjust the bond amount when subsidence-related material damage occurs to land, structures or facilities protected under CSMC 80-1-20-124(a) through (d). The Federal regulation at 30 CFR 817.121(c)(5) requires adjustment of the bond amount when subsidence-related material damage to land, structures or facilities, *or when contamination, diminution, or interruption to a water supply occurs* (emphasis added). Although New Mexico's proposed CSMC 80-1-20-127 includes a reference to proposed CSMC 80-1-20-124(b) concerning replacement of water supplies, because the term "material damage" is not defined with respect to water supplies and it is not clear that the term "facilities" would include a water supply, New Mexico's proposed CSMC 80-1-20-127 does not clearly require adjustment of the bond amount when subsidence-related

"contamination, diminution, or interruption to a water supply" occurs.

Based on the above discussion, the Director finds that, with the exception of the lack of a clear requirement at proposed CSMC 80-1-20-127 for adjustment of the bond amount when subsidence-related "contamination, diminution, or interruption to a water supply" occurs, proposed CSMC Rules 80-1-20-121, 124, 125, and 127 are no less effective than the corresponding Federal regulations at 30 CFR 817.121 (a) through (c) and satisfy the required amendment at 30 CFR 931.16(a). The

Director approves proposed CSMC Rules 80-1-20-121, 124, 125, and 127 and removes the required amendment at 30 CFR 931.16(s). However, the Director is adding a new requirement that New Mexico further revise proposed CSMC Rules 80-1-20-127 to clearly require adjustment of the bond amount when subsidence-related "contamination, diminution, or interruption to a water supply" occurs.

6. *CSMC Rules 80-1-4-15(b)(1), Procedures for Initial Processing, Record-Keeping, and Notification Requirements Concerning Petitions to Designate Lands Unsuitable for Mining*

OSM required at 30 CFR 931.16(c) that New Mexico revise CSMC Rule 80-1-4-15(b)(1) to require publication in the New Mexico State register of a public notice of receipt of a petition to designate lands unsuitable for mining (finding No. 4, 56 FR 67520, 67522, December 31, 1991).

New Mexico proposed to revise CSMC Rule 80-1-4-15(b)(1) by adding the requirement that the regulatory authority notify the general public of the receipt of such a petition in the New Mexico register of public notices. This proposed requirement is substantively identical to the requirement in the Federal regulation at 30 CFR 764.15(b)(1) and satisfies the requirement that New Mexico amend its program at 30 CFR 931.16(c).

Therefore, the Director finds that proposed CSMC Rule 80-1-4-15(b)(1) is no less effective than the Federal regulation at 30 CFR 764.15(b)(1), approves New Mexico's proposed CSMC Rule 80-1-4-15(b)(1), and removes the required amendment at 30 CFR 931.16(c).

7. *CSMC Rules 80-1-9-25 (a) and (c) and 80-1-20-49(e) (1) through (11), Requirements for Ponds, Impoundments, and Banks, Dams, and Embankments that Meet or Exceed the Class B or C Criteria of Technical Release No. 60 (210-VI-TR60, October 1985)*

At its own initiative, New Mexico proposed to revise its program to incorporate the requirements for permit applications and performance standards pertaining to design, construction, and inspection of ponds and impoundments, and banks, dams, and embankments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210-VI-TR60, October 1985), i.e., the hazardous classification criteria published by the U.S. Department of Interior, National Resource Conservation Service (NRCS). These requirements were incorporated into the Federal program on October 20,

1994 (see 59 FR 53029). Because New Mexico intended to revise its program to be no less effective than the Federal program with respect to the hazardous classification criteria published by the NRCS, OSM has identified those existing provisions in the New Mexico program which were not proposed to be revised but which New Mexico must revise in order for the New Mexico program to be no less effective than the Federal program.

a. *CSMC Rule 80-1-9-25(a) (2) and (3), and 80-1-9-25(c), Contents of permit applications.* New Mexico proposed to revise CSMC Rules 80-1-9-25(a) (2) and (3) and 80-1-9-25(c), concerning the contents of permit applications, to incorporate requirements pertaining to ponds and impoundments, and banks, dams, and embankments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210-VI-TR60, October 1985). The proposed requirements are substantively identical to the requirements in the corresponding Federal regulations at 30 CFR 780.25 (a)(2), (a)(3), and (c)(3). Therefore, the Director finds that New Mexico's program at CSMC Rule 80-1-9-25, with the exception of an existing rule that was not revised, is no less effective than the Federal program at 30 CFR 780.25 with respect to incorporation of the NRCS hazardous classification criteria.

The exception concerns New Mexico's existing CSMC 80-1-9-25(e)(5), which New Mexico did not propose to revise to incorporate requirements pertaining to the NRCS hazardous classification criteria. The corresponding Federal regulation at 30 CFR 780.25(f) requires that, if the structure meets the Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a), each plan required under 30 CFR 780.25(b), (c), and (e) must include a stability analysis of the structure and a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Therefore, the Director finds that existing CSMC 80-1-9-25(e)(5) is less effective than the revised Federal regulations at 30 CFR 780.25(f) with respect to requirements pertaining to those structures that meet the Class B or C criteria for dams in TR-60.

Based on the discussion above, the Director approves proposed CSMC Rules 80-1-9-25(a) (2) and (3) and 80-1-9-25(c), but is adding a new requirement that New Mexico further revise existing CSMC 80-1-9-25(e)(5) to

incorporate the requirements pertaining to those structures that meet the Class B or C criteria for dams in TR-60.

b. *CSMC Rules 80-1-20-49(e) (1) through (11), Performance standards.* New Mexico proposed to revise the introductory paragraph at CSMC Rule 80-1-20-49(e) to clarify that its requirements apply to all temporary or permanent impoundments at both surface and underground mining operations. In addition, New Mexico proposed to recodify CSMC Rules 80-1-20-49(e) (1) through (11) and to incorporate requirements concerning impoundments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210-VI-TR60, October 1985).

The requirements of New Mexico's CSMC Rule 80-1-20-49(e) (1) through (11), along with existing requirements at CSMC Rules 80-1-20-49 (b), (c), (d), (f), and (g) are, with two exceptions discussed below, substantively identical to the requirements in the corresponding Federal regulations at 30 CFR 816.49(a) and 817.49(a).

The first exception concerns New Mexico's existing CSMC Rules 80-1-20-49(d), which pertains to construction certification, 80-1-20-49(f)(2), which pertains to required design precipitation events, and 80-1-20-49(g) (4) and (5), which pertain to inspection and construction certification. New Mexico did not propose to revise these rules to incorporate requirements pertaining to the NRCS hazardous classification criteria. The corresponding Federal regulations at 30 CFR 816.49(a)(9)(ii) (A) and (C), 816.49(a)(11)(iv), and 816.49(12) and 30 CFR 817.49(a)(9)(ii) (A) and (C), 817.49(a)(11)(iv), and 817.49(12) include requirements pertaining to structures that meet or exceed the Class B or C criteria for dams in TR-60.

Therefore, the Director finds that proposed CSMC Rules 80-1-20-49(e) (1) through (11) are no less effective than the Federal regulations at 30 CFR 816.49(a) and 817.49(a). However, the Director also finds that existing CSMC Rules 80-1-20-49(d), 80-1-20-49(f)(2), and 80-1-20-49(g) (4) and (5) are, with respect to requirements pertaining to those structures that meet or exceed the Class B or C criteria for dams in TR-60, less effective than the revised Federal regulations at 30 CFR 816.49(a)(9)(ii) (A) and (C), 816.49(a)(11)(iv), and 816.49(12) and 30 CFR 817.49(a)(9)(ii) (A) and (C), 817.49(a)(11)(iv), and 817.49(12).

The second exception in New Mexico's proposed CSMC 80-1-20-49(e)(11) which requires barriers to

control seepage. Proposed CSMC 80-1-20-49(e)(11) has no Federal counterpart. However, this requirement is not inconsistent with the requirements of 30 CFR 816.49(a)(6), concerning foundation stability, and provides for additional protection.

Based on the discussion above, the Director approves proposed CSMC Rules 80-1-20-49(e) (1) through (11), but is adding a new requirement that New Mexico further revise existing CSMC Rules 80-1-20-49(d), 80-1-20-49(f)(2), and 80-1-20-49(g) (4) and (5) to incorporate the requirements pertaining to those structures that meet or exceed and do not meet or exceed the Class B or C criteria for dams in TR-60.

8. *CSMC Rule 80-1-9-39 (a), (b), and (c), Permit Application Requirements Concerning a Subsidence Information and Control Plan for Underground Mining Operations*

OSM required at 30 CFR 931.16 (f) and (g) that New Mexico revise, respectively, (1) its program to require that a permit application include a description of measures that an operator would use to mitigate or remedy subsidence-related material damage to the land and to occupied residential dwellings, structures related thereto, and noncommercial buildings where the damage resulted from underground mining operations conducted after October 23, 1992; and (2) CSMC Rule 80-1-9-39(d) to remove from its program the exception allowed at paragraph (d)(2) from the requirements of CSMC Rule 80-1-9-39(d), concerning adoption of measures to prevent subsidence causing material damage to the extent technologically and economically feasible (findings Nos. 8. b and c, 58 FR 65907, 65912 and 65913, December 17, 1993).

New Mexico proposed to delete existing CSMC Rules 80-1-9-39(a) (1) through (5), (b) (1) through (3), and (c) (1) through (4), and add CSMC Rules 80-1-9-39 (a) (1) through (6), (b), and (c) (1) through (9), concerning permit application requirements for subsidence information and control plans.

New Mexico's proposed CSMC Rules 80-1-9-39(a) (1) through (6), (b), and (c) (1) through (9), are, with one exception, substantively identical to the corresponding Federal regulations at 30 CFR 780.24(a) (1) through (3) and (b) (1) through (9), and satisfy the required amendments at 30 CFR 931.16 (f) and (g). The exception concerns New Mexico's requirement at proposed CSMC Rule 80-1-9-39(a)(3), concerning the pre-subsidence survey, for a photo, prior to mining, of the exterior of each non-commercial building or occupied

residential dwelling and associated structures. The counterpart Federal regulation at 30 CFR 784.20(a)(3) does not require photographs as part of the survey. However, proposed CSMC Rule 80-1-9-39(a)(3) is not inconsistent with the Federal regulations and provides for additional documentation of the condition of existing structures that may be materially damaged or for which the reasonably foreseeable use maybe diminished by subsidence.

Based on the above discussion, the Director finds that New Mexico's proposed CSMC Rules 80-1-9-39(a) (1) through (6), (b), and (c) (1) through (9), concerning permit application requirements for a subsidence information and control plan, are no less effective than the Federal regulations at 30 CFR 780.24(a) (1) through (3) and (b) (1) through (9). The Director approves proposed CSMC Rules 80-1-9-39(a) (1) through (6), (b), and (c) (1) through (9), and removes the required amendments at 30 CFR 931.16 (f) and (g).

9. CSMC Rule 80-1-11-17(c), Basis for Permit Denial

OSM required at 30 CFR 931.16(h) that New Mexico revise CSMC Rule 80-1-11-17(c) to require, as a basis of permit denial, that New Mexico (1) consider delinquent civil penalties issued pursuant to all the derivative State and Federal programs encompassed by the Federal phrase "section 518 of the Act," and (2) prohibit issuance of a permit if there exist uncorrected or unabated violations received by an applicant or other controlling entity pursuant to SMCRA, its implementing regulations, or any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA (finding No. 9.b, 58 FR 65907, 65913, December 17, 1993).

New Mexico proposed to revise CSMC Rule 80-1-11-17(c), concerning the basis for permit denial, to include requirements that are substantively identical to those in the Federal regulation at 30 CFR 773.15(b)(1) and, in doing so, has satisfied the required amendment at 30 CFR 931.16(h).

Because New Mexico's proposed rule is substantively identical to the Federal regulation, the Director finds that proposed CSMC Rule 80-1-11-17(c) is no less effective than the Federal regulation at 30 CFR 773.15(b)(1). The Director approves proposed CSMC 80-1-11-17(c) and removes the required amendment at 30 CFR 931.16(h).

10. CSMC Rules 80-1-11-17(d) and 80-1-11-19(i), Review of Permit Applications and Criteria for Permit Approval or Denial

OSM required at 30 CFR 931.16(i) that New Mexico revise CSMC Rules 80-1-11-17(d) and 80-1-11-19(i) to require that the Director of the New Mexico program, when making a determination of whether a pattern of willful violations exists, consider violations received by an applicant, operator, or controlling entity pursuant to SMCRA, its implementing regulations, or any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA (finding No. 9.c, 58 FR 65907, 65914, December 7, 1993).

New Mexico proposed to revise CSMC Rule 80-1-11-17(d) and 80-1-11-19(i), concerning, respectively, New Mexico's (1) review of permit applications for a demonstrated pattern of willful violations, and (2) criteria for permit approval and denial pertaining to a demonstrated pattern of willful violations, to include the requirement that the Director of the New Mexico program consider violations received by an applicant, operator, or controlling entity pursuant to "SMCRA." New Mexico proposed a definition of the term "SMCRA" at CSMC Rule 80-1-1-5 to mean, in addition to the Federal act, its implementing regulations at 30 CFR Chapter VII, and any State or Federal law, rule, regulation, or program enacted or promulgated pursuant to it (see finding No. 4.c for a discussion of the Director's approval of the definition of "SMCRA" proposed at CSMC Rule 80-1-1-5).

New Mexico's use of the term "SMCRA" in proposed CSMC Rules 80-1-11-17(d) and 80-1-11-19(i) is equivalent to the use, in the Federal regulations at 30 CFR 773.15(b)(3), of the phrase "SMCRA, its implementing regulations, and any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA" and satisfies the required amendment at 30 CFR 931.16(i).

Based upon the above discussion, the Director finds that proposed CSMC Rules 80-1-11-17(d) and 80-1-11-19(i) are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 773.15(b)(3), approves proposed CSMC Rules 80-1-11-17(d) and 80-1-11-19(i), and removes the required amendment at 30 CFR 931.16(i).

11. CSMC Rules 80-1-11-20 (b)(1) and (b)(3), General Procedures Pertaining to Improvidently Issued Permits

OSM required at 30 CFR 931.16(j) that New Mexico revise CSMC Rules 80-1-11-20 (b)(1) and (b)(3) to reference CSMC Rule 80-1-11-20(b)(1)(iii) instead of CSMC Rule 80-1-7-14 (finding No. 10.a, 58 FR 65907, 65914, December 17, 1993).

New Mexico proposed to revise CSMC Rules 80-1-11-20 (b)(1), (b)(1)(ii), and (b)(3), concerning review criteria for improvidently issued permits, to include requirements that are, with one exception, substantively identical to the Federal regulations at 30 CFR 773.20(b)(1) (i) and (iii). In doing so, New Mexico deleted the language that necessitated the reference to CSMC Rule 80-1-11-20(b)(1)(iii) and, thereby, satisfied the required amendment at 30 CFR 931.16(j).

The exception is that New Mexico proposed to delete, from CSMC Rule 80-1-11-20(b)(1)(ii), a reference to the applicable violations review criteria in the preamble of the Federal regulations published at 54 CFR 18438, 18440-18441. This reference identifies the applicable review criteria the Director of the New Mexico program is to use when determining what specific unabated violations, delinquent penalties and fees, and ownership and control relationship apply under this rule.

The Federal regulations at 30 CFR 773.20(b)(1)(i) require that a regulatory authority shall find that a surface coal mining and reclamation permit was improvidently issued if, under the violations review criteria of the regulatory program at the time the permit was issued, the regulatory authority should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or the permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued.

Because New Mexico proposed to delete from CSMC Rule 80-1-11-20(b)(1)(ii) the reference to the applicable violations review criteria, New Mexico's program no longer identifies the review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued. To be no less effective than the Federal regulations at 30 CFR 773.20(b)(1)(i), New Mexico

must review CSMC Rule 80-1-11-20(b)(1) to identify the applicable violations review criteria.

Based on the above discussion, the Director finds that (1) New Mexico has satisfied the required amendment at 30 CFR 931.16(j), and (2) New Mexico's proposed CSMC Rules 80-1-11-20(b)(1), (b)(1)(ii), and (b)(3), with the exception of the proposed deletion the applicable violations review criteria at CSMC Rule 80-1-11-20(b)(1)(ii), are no less effective than the Federal regulations at 30 CFR 773.20(b)(1) (i) and (iii). The Director approves proposed CSMC Rules 80-1-11-20(b)(1), (b)(1)(ii), and (b)(3) and removes the required amendment at 30 CFR 931.16(j). However, the Director is adding a new requirement that New Mexico further revise CSMC Rule 80-1-11-20(b)(1) to identify the applicable violations review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued.

12. CSMC Rule 80-1-11-29(d) Conditions of Permits

OSM required at 30 CFR 931.16(k) that New Mexico revise CSMC Rule 80-1-11-29(d) to require the permittee to update the ownership and control information when a Federal cessation order has been issued in accordance with 30 CFR 843.11, or, if there has been no change in the required information, to so notify the Director (finding No. 11, 58 FR 65907, 65915, December 17, 1993).

New Mexico proposed to revise CSMC Rule 80-1-11-29(d) to require that a permittee submit information concerning, among other things, "a Federal cessation order issued in accordance with 30 CFR 843.11." Existing CSMC Rule 80-1-11-29(d)(3) requires that the permittee notify New Mexico in writing if there has been no change in previously submitted information.

Therefore, the Director finds that proposed CSMC Rule 80-1-11-29(d) is no less effective than the Federal regulation at 30 CFR 773.17(i) and satisfies the required amendment at 30 CFR 931.16(k). The Director approves CSMC Rule 80-1-11-29(d) and removes the required amendment at 30 CFR 931.16(k).

13. CSMC Rule 80-1-19-15(c) Performance Standards for Coal Exploration

OSM required at 30 CFR 931.16(l) that New Mexico revise CSMC Rule 80-1-

19-15(c) to require that "other transportation facilities" used for coal exploration activities meet the requirements of CSMC Rules 80-1-20-150 (b) through (g) and 80-1-20-181 (a) and (b) (finding No. 12, 58 FR 65907, 65916, December 17, 1993).

New Mexico proposed to revise CSMC Rules 80-1-19-15 (c)(2), (c)(3), and (c)(3)(iii), concerning performance standards applicable to coal exploration, to apply these rules to other transportation facilities as well as to new and existing roads and to require that new and significantly altered existing roads or other transportation facilities comply with the provisions of CSMC Rules 80-1-20-150 (b) through (f) and 80-1-20-180 and 181. In addition, New Mexico proposed to further revise CSMC Rule 80-1-19-15(c)(4) to clarify that (1) any road or facility that will be retained permanently must comply with the applicable provisions of CSMC Rules 80-1-20-150, 151, 20-180, and 20-182 and (2) if a road or facility will not be retained it must be immediately reclaimed.

The Federal regulations at 30 CFR 815.15(b) require that all roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of 30 CFR 816.150 (b) through (f), 816.180, and 816.181.

The Director finds that proposed CSMC Rules 80-1-19-15 (c)(2), (c)(3), (c)(iii), and (c)(4) are no less effective than the Federal regulations at 30 CFR 815.15(b) and satisfy the required amendment at 30 CFR 931.16(l). The Director approves proposed CSMC Rules 80-1-19-15 (c)(2), (c)(3), (c)(iii), and (c)(4) and removes the required amendment at 30 CFR 931.16(l).

14. CSMC Rule 80-1-20-93(a)(1) Performance Standard Pertaining to the Design and Construction of Dams and Embankments Constructed of or Intended to Impound Coal Processing Waste

At its own initiative, New Mexico proposed to revise CSMC 80-1-20-93(a)(1) to delete the requirement that the design freeboard must be at least 3 feet and to require, for the design of each dam and embankment constructed of or intended to impound coal processing waste, that the maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the NRCS hazardous classification criteria referenced in CSMC Rule 80-1-20-49.

The corresponding Federal regulations concerning the design of each dam and embankment constructed of coal processing waste or intended to

impound such waste are at 30 CFR 816.84(b)(1) and 817.64(b)(1). These Federal regulations reference the requirements at 30 CFR 816.49(a) and 817.49(a) for determination of the maximum water elevation. As discussed in finding No. 7 above, OSM revised the Federal program at 30 CFR 816.49(a) and 817.49(a) to include new requirements for impoundments that meet or exceed the NRCS hazardous classification criteria. Specifically, the Federal regulations at 30 CFR 816.49(a)(5) and 817.49(a)(5) include the requirement that freeboard design for impoundments that meet the Class B or C criteria for dams in NRCS Technical Release No. 60 (TR-60; 210-VI-TR60, Oct. 1985), shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60. In this amendment, also discussed in finding No. 7.b above, New Mexico proposed to revise CSMC Rule 80-1-20-49(e) to include NRCS hazardous classification criteria that are no less effective than those in the Federal regulations. Specifically, New Mexico proposed to revise CSMC Rules 80-1-20-49(e)(4) to incorporated requirements concerning freeboard design for impoundments meeting the NRCS hazardous classification criteria.

Because proposed CSMC 80-1-20-93(a)(1) requires, by reference to CSMC 80-1-20-49, that the maximum water elevation be that determined by the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table, proposed CSMC 80-1-20-93(a)(1) is no less effective than the Federal regulations at 30 CFR 816.84(b)(1) and 817.64(b)(1). The Director approves proposed CSMC 80-1-20-93(a)(1); however, OSM recommends, for clarity, the New Mexico further revise proposed CSMC 80-1-20-93(a)(1) to reference the requirements at CSMC 80-1-20-49(e)(4) rather than CSMC 80-1-20-49.

15. CSMC Rules 80-1-20-97 (b) and (c), Protection of Fish, Wildlife, and Related Environmental Values

OSM required at 30 CFR 931.16(a) that New Mexico revise its program to require protection of threatened and endangered species from underground mining activities (finding No. 4, 55 FR 48837, 48839, November 23, 1990).

New Mexico proposed to revise CSMC Rules 80-1-20-97 (b) and (c) to prohibit operators from conducting "surface coal mining operations or reclamation" that are likely to jeopardize the continued existence of endangered or threatened species and their habitats, including bald and golden eagles, their nests and

eggs. New Mexico also proposed to extend the prohibition to threatened and endangered species listed by the "New Mexico Energy, Minerals and Natural Resources and Game and Fish Department" in addition to those listed by the Secretary of the U.S. Department of the Interior.

The corresponding Federal regulations at 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c) prohibit operators from conducting, respectively, "surface mining activities" or "underground mining activities" that are likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the Interior and their habitats, including bald and golden eagles, their nests and eggs.

At existing CSMC Rule 80-1-1-5, New Mexico defines (1) "Reclamation" to mean

those actions taken to restore mined land as required by the Act and these rules and regulations to a postmining land use approved by the Director

and (2) "Surface coal mining operations" to mean

(a) activities conducted on the surface lands in connection with a surface coal mine or, subject to the requirements of Section 69-25A-20 NMSA 1978 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce.

Therefore, New Mexico's use, at proposed CSMC Rules 80-1-20-97 (b) and (c), of the phrase "surface coal mining operations or reclamation" includes "surface operations and surface impacts incident to an underground coal mine" and satisfies the required amendment at 30 CFR 931.16(a).

The corresponding Federal regulations at 30 CFR 816.97(b) and 817.97(b) also require protection of species listed by the Secretary, but do not prohibit the protection of other species. Therefore, New Mexico's proposed inclusion of additional species at CSMC Rules 80-1-20-97 (b) and (c), while not required, is not inconsistent with the Federal requirements.

Based on the above discussion, the Director finds that proposed CSMC Rules 80-1-20-97 (b) and (c) are consistent with and no less effective than the Federal regulations at 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c), approves proposed CSMC Rules 80-1-20-97 (b) and (c), and removes the required amendment at 30 CFR 931.16(a).

16. CSMC Rule 80-1-20-116(b)(1), Period of Extended Responsibility

OSM required at 30 CFR 931.16(n)(2) that New Mexico revise CSMC Rule 80-1-20-116(b)(1) to require that the period of extended responsibility begin after the last year of augmented seeding, fertilizing, irrigation, or other work (finding No. 16.b, 58 FR 65907, 65919, December 17, 1993).

New Mexico proposed to revise CSMC Rule 80-1-20-116(b) (1) to (1) delete the allowance for supplemental fertilization and interseeding in order to establish species diversity to occur without disrupting the liability period and (2) require that the extended liability period begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Director in accordance with CSMC Rule 80-1-20-116(b)(6).

The Federal regulations at 30 CFR 816.116(c)(1) provide that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR with 30 CFR 816.116(c)(4).

The Director finds that the proposed revisions at CSMC Rule 80-1-20-116(b)(1), concerning the beginning of the bond liability period, (1) are substantively identical to and, therefore, no less effective than the Federal regulations at 30 CFR 816.116(c) (1), and (2) satisfy the required amendment at 30 CFR 931.16(n)(2). (Please note that the existing provision at CSMC Rule 80-1-20-116(b)(1), concerning revegetation success standards for ground cover and productivity, which allows for standards other than those developed by use of a reference area to be approved by the Director of the New Mexico program, is subject to an outstanding required amendment at 30 CFR 931.16(n)(1).)

Based on the above discussion, the Director approves the proposed revisions at CSMC Rule 80-1-20-116(b)(1), concerning the beginning of the bond liability period, and removes the required amendment at 30 CFR 931.16(n)(2).

17. CSMC 80-1-20-116(b) (1) Through (5), Revegetation Success Standards

At its own initiative, New Mexico proposed to revise CSMC 80-1-20-116(b)(1) (i) and (ii), (b)(2), and (b)(3) by recodifying these rules as CSMC 80-1-20-116 (b)(2) through (b)(5) and proposing nonsubstantive editorial

revisions at CSMC 80-1-20-116(b) (2) and (3). In addition, New Mexico proposed to revise CSMC Rule 80-1-20-116(b) (5) to (1) delete the allowance for 80 percent statistical confidence to demonstrate success of shrubland when compared to reference areas, and (2) allow shrubland stocking, in addition to ground cover and production, to be considered successful when they are at least 90 percent of the standards developed for historical records under CSMC Rule 8-1-20-116(a).

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require, among other things, that ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard and that the sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

Therefore, the Director finds that, because New Mexico's proposed CSMC Rule 80-1-20-116(b)(5) now requires success of ground cover and productivity of all revegetation to be measured with 90 percent statistical confidence in order to be considered successful, proposed CSMC Rule 80-1-20-116(b)(5) is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). The Director approves the (1) recodification and nonsubstantive editorial revisions at CSMC 80-1-20-116 (b)(2) through (b)(4), and (2) proposed revisions at CSMC Rule 80-1-20-116(b)(5).

18. CSMC 80-1-20-116(b)(6), Normal Husbandry Practices

At its own initiative, New Mexico proposed a new CSMC Rule 80-1-20-116(b)(6) that allows the Director of the New Mexico program to approve selective husbandry practices without extending the period of responsibility for revegetation success or bond liability, and identifies husbandry practices as those activities that can be expected to continue as part of the post mining land use, and are employed within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, to control disease, pest and vermin and appropriate pruning, reseeding, and transplanting activities. Proposed CSMC Rule 80-1-20-116(b)(6) also provides that husbandry practices may be allowed if they will not reduce the probability of permanent revegetative success if they are discontinued after the liability period expires and states that any practice the Director determines to be augmented

seeding, fertilization or irrigation shall not be considered a husbandry practice.

The Federal regulations at 30 CFR 816.116(c)(4) provide that the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director of OSM, in accordance with 30 CFR 732.17, that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

New Mexico's proposed CSMC Rule 80-1-20-116(b)(6) mimics the language in the Federal regulations, but does not actually identify husbandry practices. It only states that the Director of the New Mexico program may approve selective husbandry practices that would not extend the period of responsibility for revegetation success or bond liability and describes the nature of husbandry practices. The Federal regulations at 30 CFR 816.116(c)(4) require that the regulatory authority obtain prior approval, that the selected practices are normal husbandry practices, from OSM in accordance with 30 CFR 732.17 (i.e., the state program approval process).

Based on the above discussion, the Director finds that proposed CSMC Rule 80-1-20-116(b)(6) is less effective than the Federal regulations at 30 CFR 816.116(c)(4). With the exception of the allowance for the Director of the New Mexico program to approve husbandry practices that have not received approval from OSM in accordance with 30 CFR 732.17, the Director approves proposed CSMC Rule 80-1-20-116(b)(6).

However, the Director is also adding a new requirement that New Mexico revise CSMC Rule 80-1-20-116(b)(6) to either (1) identify selected husbandry practices and submit them with documentation verifying that the proposed practices would be considered normal in the areas being mined or (2) state that selected husbandry practices approved by the Director may not be implemented prior to approval from

OSM in accordance with the State program amendment process at 30 CFR 772.17.

19. CSMC Rules 80-1-20-117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), Performance Standards for the Revegetation of Trees and Shrubs

In response to required program amendments at 30 CFR 931.16 (p), (q), and (4), New Mexico proposed revisions at CSMC Rules 80-1-20-117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), concerning performance standards for the revegetation of trees and shrubs. At its own initiative, New Mexico also proposed revisions at CSMC Rule 80-1-20-117(d)(3)(i), concerning statistical sampling techniques (finding Nos. 17.a, 17.c.i, and 17.c.ii, 58 FR 65907, 65920, and 65921, December 17, 1993).

Based on the discussion in paragraphs 19.a through 19.d below, the Director approves proposed CSMC Rules 80-1-20-117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), and removes the required amendment at 30 CFR 931.16 (p), (q), and (r).

a. *CSMC Rule 80-1-20-117, Performance standards for tree and shrub stocking and utility of the trees and shrubs for the approved postmining land use.* OSM required at 30 CFR 931.16(p) that New Mexico revise CSMC Rule 80-1-20-117(a) and (b) to (1) provide revegetation success standards for lands developed as fish or wildlife habitat, recreation areas, or shelterbelts, and (2) require that the trees and shrubs used in determining stocking success and adequacy of plant arrangement shall have utility for the approved postmining land use.

In response to the required amendment at 30 CFR 931.16(p), New Mexico proposed to revise CSMC Rule 80-1-20-117 to (1) apply its tree and shrub stocking requirements to reclaimed land developed for use as fish and wildlife habitat, recreation, shelterbelts, or forestry and (2) require that trees and shrubs used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use.

The Director finds that proposed CSMC Rule 80-1-20-117 satisfies the required amendment at 30 CFR 931.16(p) and is no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3).

b. *CSMC 80-1-20-117(c)(1), (3), and (4), Performance standards for stocking of trees and shrubs where commercial forest land is the approved postmining land use.* OSM required at 30 CFR 931.16(q) that New Mexico revise CSMC

Rule 80-1-20-117(c) to (1) clarify whether the stocking rate for commercial forest land will be determined by the State Forester on a permit-specific or program-wide basis, (2) reference the correct rules for determining the number of trees, shrubs, and ground-cover plants on commercial forest land, and (3) reference CSMC Rule 80-1-20-117(d)(2) for the appropriate bond release success standards for stocking and ground cover.

In response to the required amendment at 30 CFR 931.16(q)(1), New Mexico proposed to revise CSMC 80-1-20-117(c)(1) to require that the minimum stocking of trees or shrubs will be determined by the State Forester on a *permit-specific basis* (emphasis added). In response to the required amendment at 30 CFR 931.16(q)(2), New Mexico proposed to revise CSMC Rule 80-1-20-117(c)(3), concerning success standards for areas where commercial forest land is the approved postmining land use, to (1) reference CSMC Rules 80-1-20-116(b)(5)(iv) and 20-117(b) for the approved sampling methods, and (2) delete a provision specific to tree and shrub stocking for the beginning of the extended liability period. In response to the required amendment at 30 CFR 931.16(q)(3), New Mexico proposed to revise CSMC 80-1-20-117(c)(4) to reference CSMC Rules 80-1-20-116 and 80-1-20-117 for the requirements pertaining to the demonstration required, upon request for final bond release, to show success of tree and shrub stocking and ground cover.

The Director finds that New Mexico's proposed CSMC Rules 80-1-20-117(c)(1), (3), and (4) satisfy the requirements of 30 CFR 931.16(q) (1), (2), and (3), and are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3).

c. *CSMC Rules 80-1-20-117(d)(2) and (d)(3)(i), Performance standards for tree and shrub stocking concerning sampling techniques, revegetation success standards, and the extended period of responsibility for revegetation success.* OSM required at 30 CFR 931.16(r) that New Mexico revise CSMC Rule 80-1-20-117 (d) to (1) provide at CSMC Rule 80-1-20-117 (d)(2) and (d)(3)(i) the correct references to rules pertaining to revegetation success standards and the extended period of responsibility for revegetation success, and (2) require at CSMC Rule 80-1-20-117(d)(3)(i) that the sampling techniques for measuring revegetation success shall use a 90-percent statistical confidence interval.

In response to the required amendment at 30 CFR 931.16(r)(1), New Mexico proposed to revise CSMC Rules

80-1-20-117(d)(2), concerning success standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land, to (1) reference CSMC Rules 80-1-20-116(b)(5)(iv) and 80-1-20-117(d)(1) for the revegetation success standards for stocking of trees, half-shrubs, shrubs, and ground cover, and (2) delete a provision specific to tree and shrub stocking for the beginning of the extended liability period.

In response to the required amendments at 30 CFR 931.16(r) (1) and (2), New Mexico proposed to revise CSMC Rule 80-1-20-117(d)(3)(i) to require that, upon expiration of the 5 or 10 year responsibility period and at the time of request for bond release, vegetated woody plants must be equal to or greater than 90 percent of the stocking of live woody plants of the same life form ascertained pursuant to CSMC Rule 80-1-20-117(b) with 90 percent statistical confidence.

The Director finds that New Mexico's proposed revisions of (1) CSMC Rules 80-1-20-117(d)(2) and (d)(3)(i), concerning referenced rules for revegetation success standards, and (2) CSMC Rule 80-1-20-117(d)(3)(i), concerning the requirement that the sampling techniques for measuring revegetation success shall use a 90-percent statistical confidence interval, satisfy the required amendments at 30 CFR 931.16(r) (1) and (2) and are no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and (b)(3) and 817.116(a)(2) and (b)(3).

d. *CSMC Rule 80-1-20-117(d)(3)(i), Performance standards concerning the statistical techniques for measuring success of tree and shrub stocking.* At its own initiative, New Mexico proposed a revision at CSMC 80-1-20-117(d)(3)(i) to require that statistical techniques for measuring success use appropriate parametric or nonparametric one-tail test with a 90-percent confidence interval and a 10-percent alpha error.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require, among other things, that ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard and that the sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

With one exception, New Mexico's proposed CSMC Rule 80-1-20-117(d)(3)(i), concerning statistical sampling techniques, is substantively identical to these requirements in the

Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). The exception is that New Mexico cites as appropriate statistical tests either parametric or nonparametric tests and indicates that both would be tests that are one-tailed with a 90-percent confidence interval and a 10-percent alpha error. Nonparametrically distributed populations exist when the parameters being measured are not normally distributed throughout the area being sampled, e.g., in the arid west when the vegetation cover approaches zero and where shrubs are planted and occur with irregularity throughout the reclaimed area. A test for a nonparametrically distributed population can be found to be 90% confident with a one-tailed test with a .1% alpha error, just as can a test for parametrically distributed populations.

Therefore, based on the above discussion, the Director finds that proposed CSMC Rule 80-1-20-117(d)(3)(i), concerning statistical sampling techniques, is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2).

20. CSMC Rule 80-1-20-150(c), Prohibition of Vehicular Fords or Low Water Crossings by Ancillary Roads

At its own initiative, New Mexico proposed to delete CSMC Rule 80-1-20-150(c) which prohibits vehicular use of fords or low water crossings by ancillary roads at any time there is a visible surface flow.

The Federal regulations at 30 CFR 816.151(c)(2) and 817.151(c)(2) prohibit fords of perennial and intermittent streams by primary roads. However, there is no similar prohibition in the general requirements for all roads in the Federal regulations at 30 CFR 816.150(b)(2) and (3) and 817.150(b)(2) and (3), which correspond to New Mexico's CSMC Rule 80-1-20-150.

Therefore, the Director finds that New Mexico's proposed deletion of CSMC Rule 80-1-20-150(c), concerning the prohibition pertaining to fords by ancillary roads, does not cause CSMC Rule 80-1-20-150 to be inconsistent with nor less effective than the general requirements for all roads in the Federal regulations at 30 CFR 816.150(b)(2) and (3) and 817.150(b)(2) and (3). The Director approves the proposed deletion of CSMC Rule 80-1-20-150(c).

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 New Mexico program.

The U.S. Army Corps of Engineers responded on February 27, 1996, that the proposed revisions were satisfactory (administrative record No. NM-769).

The U.S. Bureau of Land Management (BLM) responded on March 4, 1996, with the following comments (administrative record No. NM-771).

BLM questioned the appropriateness of New Mexico's proposed definitions at CSMC 80-1-1-5 for (1) "Occupied residential dwelling and associated structures," commenting that by providing for fenced in areas to count as part of a dwelling, it would allow large tracts to be excluded from mining consideration, (2) "Ownership or control link," commenting that, by using the phrase "owns and controls," the reasoning is circular, and (3) "Replacement of water supply," commenting that it is not a pure definition because procedure and definition are mixed together. Because, as discussed in finding Nos. 2 and 5.a, these definitions proposed by New Mexico are, with one exception concerning a reference to other New Mexico rules in "Occupied residential dwelling and associated structures," substantively identical to the same Federal definitions at 30 CFR 701.5 and 773.5, the Director is not requiring that New Mexico further revise its rules in response to these comments. However, nothing in New Mexico's proposed definition of "Occupied residential dwelling and associated structures," nor in the same Federal definition, excludes areas from mining. The term is defined in order that compensation may be provided if damage to such a structure occurs after October 24, 1992, that is, under certain conditions, a result of subsidence due to underground mining operations.

BLM commented that proposed CSMC Rules 80-1-9-25(a)(2) and (a)(3), concerning permit application requirements for ponds and impoundments, are incomplete statements. New Mexico's proposed amendment contained only the language that was proposed for revision and did not include language in the approved New Mexico program that was not being revised. Therefore, the commenter did

not see the subparagraphs that exist in New Mexico which complete the statements at proposed CSMC Rules 80-1-9-25 (a)(2) and (a)(3). Because complete statements exist in the New Mexico program, the Director is not requiring that New Mexico further revise its rules in response to this comment.

BLM commented that proposed CSMC Rule 80-1-9-25(c)(3), concerning permit application requirements for subsidence information and control plans, should require that photos be taken of all sides of occupied building, and buildings of considerable value, and that a foundation inspection should be done on such buildings as part of the survey of conditions. Proposed CSMC Rule 80-1-9-39(c)(3) does require a photo, taken prior to mining, of the exterior of all non-commercial buildings or occupied residential dwellings and associated structures that are within the area encompassed by the applicable angle of draw. Proposed CSMC Rule 80-1-9-39(c)(3) is substantially identical to the counterpart Federal regulation at 30 CFR 784.20(a)(3), with the exception that it requires a photo of the buildings prior to mining as part of a presubside survey. Therefore, because New Mexico's proposed requirement for a photo already provides for additional information not specified in the Federal program, the Director is not requiring that New Mexico further revise proposed CSMC Rule 80-1-9-39(c)(3) in response to this comment. However, nothing in the proposed rule would prevent the applicant from documenting the condition of the buildings to the extent recommended by the commenter.

BLM commented that proposed CSMC Rules 80-1-11-33 and 34, concerning procedures and standards for challenging ownership and control links, are detailed procedures and standards and should be covered in an internal document. As discussed in finding No. 2, these proposed rules are substantively identical to the requirements in the Federal regulations at 30 CFR 773.24 (a) through (d) and 773.25 (a) through (d). With these proposed rules, New Mexico's approved program is no less effective than the Federal program. Therefore, the Director is not requiring that New Mexico further revise its program in response to this comment.

BLM commented that at (proposed performance standards for ponds and impoundments) (1) CSMC Rule 80-1-20-49(e)(4), the size of the storm event that the impoundment is expected to weather without overtopping should be specified, (2) CSMC Rule 80-1-20-

49(e)(8), protection against sudden drawdown does not make sense because sudden drawdown is a subsurface phenomenon which would not occur as a result of sheet erosion, and (3) CSMC Rule 80-1-20-49(e)(10), it is unclear whether the rule referred to submerged highwalls in a pit left flooded after reclamation.

These New Mexico proposed rules are substantively identical to the respective counterpart Federal regulations at 30 CFR 816.19(a)(5) and 817.49(a)(5), 816.49(a)(7) and 817.49(a)(7), and 816.49(a)(10) and 817.49(a)(10). In response to the comment concerning proposed CSMC Rule 80-1-20-49(e)(4), the Director notes that the design storm event is specified within the referenced "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60. In response to the comment concerning proposed CSMC Rule 80-1-20-49(e)(8), the rule requires protection (e.g., by rip rap, fabric, or vegetation) of the pond or impoundment inslope against sudden drawdown, which could occur as a result of pumping or other rapid release of water. In addition, the rule requires outslope protection that could occur as a result of surface sheet erosion. In response to the comment concerning proposed CSMC Rule 80-1-20-49(e)(10), the Director notes that the rule does refer to a permanent impoundment which is created by a portion of a pit approved to be left in the reclaimed environment in support of the approved postmining land use. Because New Mexico's proposed rules are substantively identical to the counterpart Federal regulations, the Director is not requiring that New Mexico further revise its rules in response to these comments.

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 New Mexico 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. NM-768. It responded on February 27, 1996, that it had no comments (administrative record No. NM-770).

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. NM-768). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with one exception and certain additional requirements, New Mexico's proposed amendment as submitted on January 22, 1996.

The Director approves, as discussed in finding No. 1, nonsubstantive editorial revisions at: CSMC Rule 80-1-11-22(d), concerning remedial measures for improvidently issued permits; CSMC Rule 80-1-20-41(e)(3)(i), concerning general performance standard requirements for protection of the hydrologic balance; CSMC Rule 80-1-20-82(a)(4), concerning inspections of coal processing waste banks; and CSMC Rule 80-1-20-89(d)(2), concerning disposal of noncoal wastes.

The Director approves, as discussed in finding No. 2, concerning rules that are substantively identical to the corresponding Federal regulations at: CSMC Rule 80-1-1-5, the definitions of "Applicant/violator system or AVS," "Federal violation notice," "Ownership or control link," "State violation notice," "Violation notice," "OSM," and "Road;" CSMC Rules 80-1-11-20(c) (1) and (2) and (e), concerning general procedures for improvidently issued permits; CSMC 80-1-11-24(a) and [deletion of] (c), concerning rescission procedures for improvidently issued permits; CSMC Rule 80-1-11-31 (a) through (d), concerning verification of ownership or control application information; CSMC Rule 80-1-11-32 (a) through (c), concerning review of ownership or control and violation information; CSMC Rule 80-1-11-33 (a) through (d), concerning procedures for challenging ownership or control links shown in AVS; and CSMC Rule 80-1-11-34 (a) through (d), concerning standards for challenging ownership or control links and the status of violations;

The Director approves, as discussed in: finding No. 3, CSMC Rule 80-1-1-5, concerning the definition of "Qualified laboratory;" finding No. 5.a, CSMC Rule 80-1-1-5, concerning definitions for "Drinking, domestic, or residential water supply," "Noncommercial building," and "Replacement of water supply;" finding No. 14, CSMC Rule 80-1-20-93(a)(1),

concerning performance standard pertaining to the design and construction of dams and embankments constructed of or intended to impound coal processing waste; and finding No. 20, deletion of CSMC Rule 80-1-20-150(c), concerning the prohibition pertaining to vehicular use of fords or low water crossings by ancillary roads at any time there is a visible surface flow.

The Director removes existing required amendments and approves, as discussed in: finding No. 4, CSMC Rule 80-1-1-5, concerning the definition of "SMCRA" and CSMC Rules 80-1-7-14(c) (1) through (5), concerning compliance information required in permit applications; finding No. 6, CSMC Rule 80-1-4-15(b)(1), concerning procedures for initial processing, record-keeping, and notification requirements concerning petitions to designate lands unsuitable for mining; finding No. 8, CSMC Rules 80-1-9-39(a) (1) through (6), (b), and (c) (1) through (9), concerning permit application requirements for subsidence information and control plans; finding No. 9, CSMC Rule 80-1-11-17(c), concerning the basis for permit denial; finding No. 10, CSMC Rules 80-1-11-17(d) and 80-1-11-19(i), concerning, respectively, review of permit applications for a demonstrated pattern of willful violations, and criteria for permit approval and denial pertaining to a demonstrated pattern of willful violations; finding No. 12, CSMC Rule 80-1-29(d), concerning conditions of permits; finding No. 13, CSMC Rules 80-1-19-15 (c)(2), (c)(3), (c)(3)(iii), and (c)(4), concerning performance standards applicable to coal exploration; finding No. 15, CSMC Rules 80-1-20-97 (b) and (c), concerning protection of fish, wildlife, and related environmental values; finding No. 16, CSMC Rule 80-1-20-116(b)(1), concerning the period of extended liability for demonstration of revegetation success; finding No. 17, CSMC Rule 80-1-20-116(b)(1) through (b)(5), concerning revegetation success standards; and finding No. 19, CSMC Rules 80-1-20-117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), concerning performance standards for revegetation success pertaining to trees and shrubs.

With the requirement that New Mexico further revise its rules, the Director approves, as discussed in: finding No. 5.a, CSMC Rule 80-1-1-5, concerning definitions for "Material damage" and "Occupied residential dwelling and structures related thereto;" and finding No. 7, CSMC Rules 80-1-9-25 (a) and (c) and 80-1-20-49(e) (1) through (11), concerning requirements for ponds, impoundments, and banks,

dams, and embankments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210-VI-TR60, October 1985).

With the requirement that New Mexico further revise its rules, the Director removes existing required amendments and approves, as discussed in: finding No. 5.b, CSMC Rules 80-1-20-121 (a) through (d), concerning general requirements for subsidence control, CSMC Rules 80-1-20-124 (a) through (d), concerning surface owner protection and restoration, replacement, repair, or compensation of subsidence-caused damages, CSMC Rules 80-1-20-125 (a) through (e), concerning rebuttable presumption of causation by subsidence, and CSMC Rules 80-1-20-127, concerning the requirement to adjust the bond amount for subsidence damage; finding No. 11, CSMC Rules 80-1-11-20 (b)(1), (b)(1)(ii), and (b)(3), concerning review criteria for inadvertently issued permits; and finding No. 18, CSMC Rule 80-1-20-116(b)(6), concerning normal husbandry practices that may be used during the extending liability period for demonstrating revegetation success, with the exception of the allowance for the Director of the New Mexico program to approve husbandry practices that have not received approval from OSM.

The Federal regulations at 30 CFR Part 931, codifying decisions concerning the New Mexico's 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 New Mexico 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 New Mexico of only such provisions.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

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

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribe or State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the

Department relied upon the data and assumptions in the analysis for the corresponding Federal regulations.

6. Unfunded Mandates Reform Act

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

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

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

PART 931—NEW MEXICO

1. The authority citation for Part 931 continues to read as follows:

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

2. Section 931.15 is amended by adding paragraph (t) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(t) The director approves, with one exception at CSMC 80-1-20-116(b)(6) concerning the authorization for the Director of the New Mexico program to approve normal husbandry practices that have not been approved by OSM, the proposed revisions submitted by New Mexico on January 22, 1996.

3. Section 931.16 is amended by removing and reserving paragraphs (a), (c), (d), (f), (g), (h), (i), (j), (k), (l), (p), (q), (r), and (s); revising (n); and adding paragraphs (w),(x),(y), (z), and (aa) to read as follows:

§ 931.16 Required program amendments.

* * * * *

(n) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-20-116(b)(1), or otherwise amend its program, to require that all revegetation success standards and measuring techniques be approved by the Director of OSM as well as the Director of MMD.

* * * * *

(w) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-1-5, for the definitions of "Material damage" and "Occupied residential dwelling and associated structures" to include references in these definitions to CSMC Rules 80-1-20-121, 125, and 127.

(x) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-9-29(e)(5) and CSMC Rules 80-1-20-49(d), (f)(2), and (g)(4) and (5), to incorporate the requirements pertaining to those structures that meet or exceed the Class B or C criteria for dams in TR-60.

(y) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-11-20(b)(1) to violations review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued.

(z) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-20-116(b)(6) to either

(1) Identify selected husbandry practices and submit them with documentation verifying that the proposed practices would be considered normal in the areas being mined or

(2) State that selected husbandry practices approved by the Director may not be implemented prior to approval from OSM in accordance with the State program amendment process at 30 CFR 772.17.

(aa) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80-1-20-127 to clearly require adjustment of the bond amount when subsidence-related contamination, diminution, or interruption to a water supply occurs.

[FR Doc. 96-13265 Filed 5-28-96; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

[VA-105-FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of five explanatory statements written to clarify and assist the implementation of, and compliance with, recent changes to §§ 480-03-19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas.

The amendment is intended to address a required program amendment at 30 CFR 946.16(a).

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

- I. Background on the Virginia Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determination.

I. Background on the Virginia Program

SMCRA was passed in 1977 to address environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforcers of SMCRA, these "primacy" States accept a shared responsibility with OSM to achieve the goals of the Act. Such States join with OSM in a shared commitment to the protection of citizens from abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry—producers of an important sources of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct