

D.C. Code reference (original conviction)	Offense description	Original authorized term of supervised release	Maximum authorized new term of imprisonment
33-603(b)	Possession of drug paraphernalia w/intent to use it— 2nd + offense.	3 years	1 year.
33-603(c)	Delivering drug paraphernalia to a minor	3 years	2 years.
Title 40			
40-713	Negligent homicide (vehicular)	3 years	2 years.
40-718	Smoke screens	3 years	2 years.

NOTES: (1) An asterisk means that the offense is statutorily designated as a Class A felony.
 (2) If the defendant is a sex offender subject to registration, the Original Authorized Term of Supervised Release is the maximum period of registration to which the sex offender is subject (ten years or life). Sex offender registration is required for crimes such as first degree sexual abuse, and such crimes are listed on this Table with the notation "> periods of SOR" as the Original Authorized Term of Supervised Release. Sex offender registration, however, may also be required for numerous crimes (such as burglary or murder) if a sexual act or contact was involved or was the offender's purpose. In such cases, the offender's status will be determined by the presence of an order from the sentencing court pursuant to D.C. Code 24-1123 certifying that the defendant is a sex offender.
 (3) If the defendant committed his offense on or after August 5, 2000, but before August 11, 2000, the maximum authorized terms of imprisonment and further supervised release shall be determined by reference to 18 U.S.C. 3583.

(d) Imprisonment; successive revocations. (1) When the Commission revokes a term of supervised release that was imposed by the Commission upon a previous revocation of supervised release, the maximum term of imprisonment is the maximum term authorized by paragraph (a) of this section, less the term or terms of imprisonment that were previously imposed by the Commission. In calculating such previously-imposed term or terms of imprisonment, the Commission shall use the term as imposed without deducting any good time credits that may have been earned by the offender prior to his release from prison. In no case shall the total of successive terms of imprisonment imposed by the Commission exceed the maximum term of imprisonment that the Commission was authorized to impose in the first revocation order.

(2) For example, in the case of a five-year term of supervised release carrying a maximum term of imprisonment of three years, the Commission at the first revocation may have imposed a one-year term of imprisonment and a further four-year term of supervised release. At the second revocation, the maximum authorized term of imprisonment will be two years, which is the original maximum authorized term of imprisonment of three years minus the one-year term of imprisonment that was imposed at the first revocation.

(e) Further term of supervised release; successive revocations. (1) When the Commission revokes a term of supervised release that was imposed by the Commission following a previous revocation of supervised release, the Commission may also impose a further term of supervised release. The maximum authorized length of such a term of supervised release shall be the original maximum authorized term of supervised release as set forth in

paragraph (b) of this section, less the total of the terms of imprisonment imposed by the Commission on the same sentence (including the term of imprisonment imposed in the current revocation).

(2) For example, in the case of a five-year term of supervised release carrying a maximum period of imprisonment of three years, the Commission at the first revocation may have imposed a one-year term of imprisonment and a four-year further term of supervised release. If, at a second revocation, the Commission imposes another one-year term of imprisonment, the maximum authorized further term of supervised release will be three years (the original five-year period minus the total of two years imprisonment).

(f) Effect of sentencing court imposing less than the maximum authorized term of supervised release. If the Commission has revoked supervised release, the maximum authorized period of further supervised release is determined by reference to the original maximum authorized term as a set forth in paragraph (b) of this section, even if the sentencing court did not originally impose the maximum authorized term.

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Dated: November 15, 2000.
Michael J. Gaines,
Chairman, U.S. Parole Commission.
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DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[CO-032-FOR]

Colorado Regulatory Program

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

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Colorado regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado proposed revisions to and additions of rules about definitions; permit application requirements; comment period for revisions; requirements for permit approval or denial; and performance standards for sedimentation ponds, discharge structures, impoundments, stream buffer zones, coal exploration, and coal processing plants and support facilities not located at or near the mine site or not within the permit area for the mine. Colorado revised its program to be consistent with the corresponding Federal regulations and clarify ambiguities.

EFFECTIVE DATE: November 24, 2000.
FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 844-1400, extension 1424. Internet: JFULTON@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:
 I. Background on the Colorado Program.
 II. Submission of the Proposed Amendment.
 III. Director's Findings.

IV. Summary and Disposition of Comments.

V. Director's Decision.

VI. Procedural Determinations.

I. Background on the Colorado Program

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

II. Submission of the Proposed Amendment

By letter dated May 12, 2000, Colorado sent to us an amendment to its program (administrative record No. CO-691) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado sent the amendment in response to May 7, 1986, and June 19, 1997, letters (administrative record Nos. CO-282 and CO-686) that we sent to Colorado in accordance with 30 CFR 732.17(c); required program amendments codified at 30 CFR 906.16(d) and (e); and to include changes made at its own initiative.

We announced receipt of the proposed amendment in the June 7, 2000, **Federal Register** (65 FR 36098, administrative record No. C-691-2). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 8, 2000.

III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

1. Rules 1.04(71), (81a), (86a) and (137a), Proposed Definitions Containing Language That Is the Same as or Similar to the Corresponding Federal Definitions at 30 CFR 701.5

Rule 1.04(71) (30 CFR 701.5), concerning the definition of "Land use,"

Rule 1.04(81a) (30 CFR 701.5), concerning the definition of "Other treatment facilities" (replacing the deleted definition of "Sediment treatment facilities" at Rule 1.04(115a)),

Rule 1.04(86a) (30 CFR 701.5), concerning the definition of "Permanent impoundment," and

Rule 1.04 (137a) (30 CFR 701.5), concerning the definition of "Temporary impoundment."

Because the proposed definitions at Rules 1.04(71), (81a), (86a) and (137a) contain language that is the same as or similar to the corresponding Federal definitions, the Director finds that they are as effective as the corresponding Federal regulations at 30 CFR 701.5. The Director approves the proposed definitions of "Land use," "Other treatment facilities," "Permanent impoundment," and "Temporary impoundment" at Rules 1.04(71), (81a), (86a) and (137a).

2. Rule 1.04(115), Definition of "Sedimentation pond"

Colorado proposed at Rule 1.04(115) the definition of "Sedimentation pond" that, with two exceptions, is the same as the Federal definition of "sedimentation pond" at 30 CFR 701.5.

The first exception is that Colorado's proposed definition of "Sedimentation pond" clarifies that the State Engineer's requirements are not applicable to those structures designed solely to control sediment or which do not store water. There is no counterpart in the Federal program to requirements of the State Engineer. By this clarification, Colorado has not diminished the requirements of the Colorado program that do have counterparts in the Federal program. Therefore, the clarification is consistent with the Federal definition of "sedimentation pond" at 30 CFR 701.5.

The second exception is that Colorado's proposed definition of "Sedimentation pond" distinguishes between impoundments used as a "primary sediment control structure" to remove solids from water and "secondary sedimentation control measures," such as ditches, riprap, check dams, mulches, and other measures used to reduce overland flow velocity, reduce runoff volume or trap sediment. Secondary sedimentation control structures may contribute to a sediment control program but are not considered a sedimentation pond. The Federal regulations at 30 CFR 816.45 provide for the use of sediment control measures such as straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce flow velocity, reduce runoff volume, or trap sediment. Colorado's clarification that such measures are not sedimentation ponds is consistent with the provision in the Federal regulations for use of such sediment control measures. In addition, Colorado's existing Rule 4.05.5 has the same requirements for sediment

control measures as do the Federal regulations at 30 CFR 816.45.

The Director finds, based on the discussion above, that Colorado's proposed definition of "Sedimentation pond" at Rule 1.04(115) is as effective as the Federal definition of "sedimentation pond" at 30 CFR 701.5 and approves it.

3. Rules 2.05.3(4); (4)(a)(iii), (iv), (v), (vi) and (vii); and 4(b), Reclamation Plan: Sedimentation Ponds and Other Treatment Facilities, Impoundments, Banks, Dams, and Embankments

Colorado proposed at Rule 2.05.3(4) and (4)(a) to require (in a permit application) a general plan and detailed design plan for each proposed sedimentation pond, impoundment, other treatment facility and diversion. This requirement is similar to and as effective as the requirement in the Federal regulations at 30 CFR 780.25(a) and 784.16(a) (see the discussion of the use of the terms "sedimentation ponds and the treatment facilities" in the Colorado program in place of the term "siltation structure used in the Federal programs at finding No. 7).

Colorado proposed editorial revisions at Rule 2.05.3(4)(a)(iii) concerning application requirements for impoundments that must meet the applicable requirements of the State Engineer. Specifically, Colorado proposed to refer to the defined term "impoundment" (rather than "reservoir") and to correct a typographical error by requiring any impoundment with a capacity of 100 (rather than 1000) acre feet to meet the applicable requirements of the State Engineer. OSM has no counterpart Federal regulations governing impoundments which require State Engineer approval; however, the revisions proposed to Rule 2.05.3(4)(a)(iii) do not conflict and are consistent with and as effective as the Federal regulations concerning impoundments at 30 CFR 780.25(c) and 784.16(c).

Colorado required at proposed Rule 2.05.3(4)(a)(iv) that where a sedimentation pond or impoundment meets or exceeds the criteria at 30 CFR 77.216(a), the permittee must comply with the applicable requirements of the Mine Safety and Health Administration (MSHA), 30 CFR 77.216-1 and -2. Colorado's requirement proposed at Rule 2.05.3(4)(a)(iv) is the same as and as effective as the requirement in the Federal regulations at 30 CFR 780.25(c)(2) and 784.16(c)(2) concerning structures that meet the size or other requirements of 30 CFR 77.216-1 and 77.216-2.

Colorado proposed at Rule 2.05.3(4)(a)(v) that any plans required to be submitted to, and approved by, the Office of the State Engineer or MSHA for impoundments shall also be submitted to Colorado as part of the permit application. Colorado's requirement concerning impoundments proposed at Rule 2.05.3(4)(a)(v) is the same as the requirement in Federal regulations at 30 CFR 780.25(a)(2) and 784.16(a)(2), with the exception that Colorado also included a reference to plans required to be approved by the State Engineer. This exception has no counterpart in the Federal regulations (as discussed above), but is consistent with the Federal regulations. Therefore, Rule 2.05.3(4)(a)(v) is as effective as the Federal regulations at 30 CFR 780.25(a)(2) and (c)(2) and 784.16(a)(2) and (c)(2).

Colorado proposes to add new Rule 2.05.3(4)(a)(vi) requiring that all impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Natural Resource Conservation Service (NRCS), Technical Release No. 60 (TR-60, 210-VI-TR60, October 1985), "Earth Dams and Reservoirs," comply with the requirements for structures that meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a), and to state that TR-60 and 30 CFR 77.216(a) are incorporated by reference. Colorado's requirement in proposed Rule 2.05.3(4)(a)(vi) is the same as and as effective as the requirement in the Federal regulations at 30 CFR 780.25(a)(2) and 784.16(a)(2) concerning impoundment meeting the Class B or C criteria.

Colorado proposed to add new Rule 2.05.3(4)(a)(vii) requiring that (1) each plan for an impoundment which meets the Class B or C criteria in TR-60 or meets the size or other criteria of 30 CFR 77.216(a) shall include a stability analysis of the structure, (2) the stability analysis shall include, but shall not be limited to, strength parameters, pore pressure, and long term seepage conditions, and (3) the plan shall also contain 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. Colorado's proposed Rule 2.05.3(4)(a)(vii) is consistent with and as effective as the Federal regulations at 30 CFR 780.25(f) and 784.16(f).

Colorado revised proposed Rule 2.05.3(4)(b), concerning the applicable design requirements for sedimentation ponds, whether temporary or permanent, to correct typographical

errors and clarify the intent of the rule. Colorado's proposed Rule 2.05.3(4)(b) is consistent with and as effective as the Federal regulations at 30 CFR 780.25(c) and 784.16(c).

The Director, based on the above discussion, approves Colorado's proposed Rules 2.05.3(4); 2.05.3(4)(a)(iii), (iv), (v), (vi), and (vii); and 2.05.3(4)(b) concerning application requirements for sedimentation ponds, other treatment facilities, impoundments, banks, dams, and embankments.

4. Rules 2.05.3(8)(a)(iii), (iv), (v) and (vi), Coal Mine Waste and Non-Coal Processing Waste Banks, Dams, or Embankments

Colorado proposed at Rule 2.05.3(8)(a)(iii), concerning coal mine waste and non-coal processing waste banks, dams, or embankments, to revise its requirements for impoundments that must meet the applicable requirements of the State Engineer. Specifically, Colorado proposed to refer to the defined term impoundment (rather than reservoir) and to correct a typographical error by requiring any impoundment with a capacity of 100 (rather than 1000) acre feet to meet the applicable requirements of the State Engineer. OSM has no counterpart Federal regulations requiring such impoundments to meet requirements of the State Engineer; however, the revisions proposed to Rule 2.08.3(8)(a)(iii) are consistent with and as effective as the Federal regulations concerning coal processing waste impoundments at 30 CFR 780.25(c), (d) and (e) and 784.16(c), (d), and (e).

Colorado also proposed to revise Rule 2.05.3(8)(a)(iii) by recodifying the last sentence as Rule 2.05.3(8)(a)(iv). Proposed Rule 2.05.3(8)(a)(iv) requires that if a coal mine waste and non-coal processing waste banks, dams, or embankments meet or exceed the criteria of 30 CFR 77.216(a), the permittee must comply with the applicable requirements of the MSHA, 30 CFR 77.216-1 and -2. This requirement is the same as and as effective as the Federal regulations at 30 CFR 780.25(c)(2), (d) and (e) and 784.16(c)(2), (d) and (e).

Colorado proposed to add new Rule 2.05.3(8)(a)(v) that requires all impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, NRCS, Technical Release No. 60 (TR-60, 210-VI-TR60, October 1985), "Earth Dams and Reservoirs," comply with the requirements for structures that meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a), and incorporated by reference

TR-60 and 30 CFR 77.216(a). This requirement at proposed Rule 2.05.3(8)(a)(v) is the same as and as effective as the requirement in the Federal regulations at 30 CFR 780.25(c)(2) and 784.16(c)(2) concerning impoundments meeting the Class B or C criteria.

Colorado proposed to add new Rule 2.05.3(8)(a)(vi) which provides that (1) each plan for an impoundment which meets the Class B or C criteria in TR-60 or meets the size or other criteria of 30 CFR 77.216(a) shall include a stability analysis of the structure, (2) the stability analysis shall include, but shall not be limited to, strength parameters, pore pressure, and long term seepage conditions, and (3) the plan shall also contain 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. Colorado's proposed Rule 2.05.3(8)(a)(vi), concerning coal mine waste and non-coal processing waste banks, dams, or embankments, is the same as and as effective as the Federal regulations at 30 CFR 780.25(f) and 784.16(f).

The Director, based on the above discussion, approves Colorado's proposed Rules 2.05.3(8)(a)(iii), (iv), (v), and (vi), concerning coal mine waste and non-coal processing waste banks, dams, or embankments.

5. Rules 2.07.3(3)(b) and (c), Time Frame for Written Comments Concerning Technical Revisions

Colorado proposed an editorial revision at Rule 2.07.3(3)(b) to replace the "Soil Conservation Service" with the current agency name, the "National Resource Conservation Service." Colorado proposed to revise Rule 2.07.3(3)(c) to clarify that written comments regarding technical revisions may be submitted within 10 days of the initial newspaper publication. This revision clarifies that the written comment period for a technical revision is different from the written comment period for new permits, permit revisions and permit renewals. Colorado's clarification in Rule 2.07.3(3)(c) is consistent with Colorado's existing Rule 2.08.4(6)(b)(ii) which specifies the written comment period for technical revisions.

The Federal regulations at 30 CFR 774.13(b)(2) require that the regulatory authority establish guidelines concerning the extent of revisions for which all the permit application information requirements and procedures, including public participation, shall apply. The Director

finds that Colorado's proposed Rules 2.07.3(3) (b) and (c) are consistent with and as effective as the Federal regulations at 30 CFR 773.13(b)(2).

6. Rules 1.04(31a) and 2.07.6(2)(c), Definition of "Cumulative Impact Area" and the Criteria for Permit Approval or Denial

A. *Rule 1.04(31a), Definition of "Cumulative impact area."* Colorado proposed at Rule 1.04(31a) a definition of "Cumulative impact area" meaning the area which includes, at a minimum, the entire projected lives through bond release of: the proposed operation; all existing operations; any operation for which a permit application has been submitted to the Division; all other operations required to meet diligent development requirements for leased federal coal, for which there is actual mine development information available.

Colorado's existing Rule 1.04(51) defines the term "general area" to mean with respect to hydrology, the topographic and ground water basin surrounding the area to be mined during the life of the operation which is of sufficient size, including aerial extent and depth, to include one or more watersheds containing perennial streams and ground water systems and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

The Federal definition of "cumulative impact area" at 30 CFR 701.5 means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of: (a) The proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the regulatory authority, and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

Colorado uses the term "cumulative impact area" in its rules in conjunction with the term "general area" for which OSM has no counterpart. Colorado's proposed definition of "cumulative impact area" describes an area which includes, at a minimum, an area within the boundaries of mining related operations. The counterpart Federal definition of "cumulative impact area" describes an area including the same operations, but which would also include any area of impact outside of and resulting from operations within the boundaries of mining related operations. However, Colorado's definition of the term "general area" describes the

topographic and ground water basin surrounding the area to be mined.

Therefore, the Director finds that Colorado's proposed definition of "cumulative impact area," at Rule 1.04(31a) used in conjunction with the existing term "general area," defined at Rule 1.04(51) is an effective as the Federal definition of "cumulative impact area" at 30 CFR 701.5 and approves it.

B. *Rule 2.07(2)(c), written findings concerning cumulative hydrologic impacts of all anticipated mining.* Colorado proposed Rule 2.07.6(2)(c), concerning the written findings the regulatory authority must make about the probable cumulative hydrologic impacts of all anticipated coal mining prior to approval of a permit or revision application, that is, with one exception, the same as the Federal regulation at 30 CFR 773.15(c)(5). The exception is that Colorado's proposed rule uses the terms "general and cumulative impact area" where the Federal regulation uses the term "cumulative impact area." As discussed in finding No. 6.A above, the Director found that Colorado's use of the terms "general area" and "cumulative impact area" is as effective as the use of the term "cumulative impact area" in Federal regulations.

Based on the above discussion, the Director finds that proposed Rule 2.07.6(2)(c), in conjunction with Colorado's proposed definition of "cumulative impact area" at Rule 1.04(31a) and existing definition of "general area" at Rule 1.04(51), is the same as and as effective as the Federal regulation at 30 CFR 773.15(c)(5), concerning the written findings about cumulative hydrologic impacts necessary for permit application approval. The Director approves proposed Rule 2.07.6(2)(c).

7. Rules 4.05.2(1), (2), (3)(a), (4), (5) and (6), Sedimentation Ponds and Other Treatment Facilities (Siltation Structures) and Water Quality Standards and Effluent Limitations

Colorado proposed to revise Rule 4.05.2, concerning sedimentation ponds and other treatment facilities and water quality standards and effluent limitations, to include in paragraphs (1), (2), (3)(a), (4), (5) and (6) a reference to the term "other treatment facilities," so that all the requirements of these rules apply to the use of "other treatment facilities" as well as "sedimentation ponds."

The counterpart Federal regulations at 30 CFR 816.46 and 817.46 refer to the use of siltation structures. Colorado has deleted its definition of "siltation structure," added a definition of "other

treatment facilities" (see finding No. 1) and revised its definition of "sedimentation pond" (see finding No. 2). Wherever the Federal regulations at 30 CFR 816.46 and 817.46 refer to the term "siltation structures," Colorado refers to the terms "sedimentation pond" and "other treatment facilities." Colorado's proposed revisions at Rule 4.05.2 are otherwise the same as the respective counterpart Federal regulations at 30 CFR 816.42, 816.46, 817.42 and 817.46 as follows:

Rule 4.05.2(1), 30 CFR 816/817.46(b)(2)
Rule 4.05.2(2), 30 CFR 816/817.46(b)(5)
Rule 4.05.2(3)(a), 30 CFR 816/817.46(e)(2)
Rule 4.05.2(4), 30 CFR 816/817.46(a)(1) and (2)
Rule 4.05.2(5), 30 CFR 816/817.46(d)(2)
Rule 4.05.2(6), 30 CFR 816/817.42

The Federal regulations at 30 CFR 701.5 define "siltation structures" to mean sedimentation ponds or other treatment facilities. Because Colorado uses the terms "sedimentation ponds" and "other treatment facilities" wherever the Federal regulations use the term "siltation structure," Colorado's rules are the same as the Federal regulations. Therefore, the Director finds that Colorado's proposed Rules 4.05.2(1), (2), (3)(a), (4), (5), and (6) are as effective as the counterpart Federal regulations at 30 CFR 816.42, 816.46, 817.42 and 817.46 and approves them.

8. Rule 4.05.6, Sedimentation Ponds and Other Treatment Facilities

Colorado proposed to recodify and or revise Rule 4.05.6, concerning general requirements for sedimentation ponds, as follows:

Rule 4.05.6(1) to make the requirements of Rule 4.05.6 applicable to "other treatment facilities" as well as "sedimentation ponds;"

Rule 4.05.6(2) to require that sedimentation ponds and other treatment facilities be designed, constructed and maintained in compliance with Rules 4.05.6 and 4.05.9;

Rule 4.05.6(3) to make the requirements of Rules 4.05.6(3)(a), (3)(b) and (3)(c) applicable to other treatment facilities as well as sedimentation ponds, and to delete Rule 4.05.6(3)(d) and (3)(e) concerning design and construction requirements for spillways (Colorado proposed these requirements in Rule 4.05.9, see finding No. 10);

Rule 4.05.6(4) requiring that spillways for sedimentation ponds and other treatment facilities comply with Rule 4.05.9(2);

Rule 4.05.6(5) requiring all supporting calculations, documents and drawings used to establish the requirements of Rules 4.05.6 and 4.05.9, be included in

the permit application including any revisions to a permit (note: this was an existing rule previously codified as 4.05.6(7) and was only revised to make the rule applicable to permit revisions and reference 4.05.6 rather than 4.05.6(3));

Rule 4.05.6(6) requiring that sedimentation ponds be designed, constructed and maintained to prevent short-circuiting to the extent possible (note: this was an existing rule previously codified as Rule 4.05.6(9) and not otherwise revised); and

Rule 4.05.6(7) requiring that sedimentation ponds or other treatment facilities not be removed until the disturbed area is reclaimed and it is demonstrated that the requirements of Rule 4.05.2(2) are met and if proposed to remain as permanent structures, it must be demonstrated that the requirements of Rule 4.05.9 are met (note: this was an existing rule previously codified as 4.05.6(14) and revised only so that its requirements apply to other treatment facilities as well as sedimentation ponds).

Wherever the Federal regulations at 30 CFR 816.46 and 817.46 refer to the term "siltation structures," Colorado refers to the terms "sedimentation pond" and "other treatment facilities." Colorado's proposed Rule 4.05.6 is otherwise the same as or similar to the respective counterpart Federal regulations at 30 CFR 780.12(a)(4), 780.18(b), 816.46 and 817.46 as follows:

Rule 4.05.6(1), 30 CFR 816/817.46(c)(1)(i) and (d)
 Rule 4.05.6(1)(a), 30 CFR 816/817.46(b)(3)
 Rule 4.05.6(1)(b), 30 CFR 816/817.46(c)(1)(ii)
 Rule 4.05.6(2), 30 CFR 816/817.46(b)(4)
 Rule 4.05.6(3)(a), 30 CFR 816/817.46(c)(1)(iii) (B and C),
 Rule 4.05.6(3)(b), 30 CFR 816/817.46(c)(1)(iii) (A and F)
 Rule 4.05.6(3)(c), 30 CFR 816/817.46(c)(1)(iii) (D)
 Rule 4.05.6(4), 30 CFR 816/817.46(c)(2)
 Rule 4.05.6(5), 30 CFR 780.12(a)(4) and 780.18(b)
 Rule 4.05.6(6), 30 CFR 816/817.46(c)(iii)(E)
 Rule 4.05.6(7), 30 CFR 816/817.46(b)(5)
 (Please note that Colorado's counterparts to the Federal regulations at 30 CFR 816.46(c)(iii) (G, H, and I) are in proposed Rule 4.05.9(7)(b) discussed in finding No. 10 below).

Therefore, the Director finds that Colorado's proposed revisions at Rule 4.05.6 are as effective as the counterpart Federal regulations at 30 CFR 780.12(a)(4), 780.18(b), 816.46 and 817.46 and approves them.

9. Rule 4.05.7, Discharge Structures

Colorado proposed to revise Rule 4.05.7, concerning the requirement to use erosion control measures to

minimize disturbance from discharge structures to the hydrologic balance, by adding "other treatment facilities" to those sedimentation ponds, impoundments, and other structures to which the rule currently applies.

The counterpart Federal regulations at 30 CFR 816.47 and 817.47 do not refer to "other treatment facilities"; Colorado's rule is otherwise the same as the Federal regulations. The addition of the reference to "other treatment facilities" provides the capability of applying the rule to a broader spectrum of structures and therefore ensuring environmental protection in a broader spectrum of circumstances.

Therefore, the Director finds that Colorado's proposed Rule 4.05.7 is consistent with and as effective as the Federal regulations at 30 CFR 816.47 and 817.47 and approves it.

10. Rules 4.05.9(1) through (21), Impoundments

OSM required at 30 CFR 906.16(d) that Colorado revise rule 4.05.9 to clearly indicate that Rules 4.05.9(1)(g) and 4.05.9(4) through (13) apply to both temporary and permanent impoundments (56 FR 1371, January 14, 1991). OSM required at 30 CFR 906.16(e) that Colorado revise Rule 4.05.9(2) to remove the phrase "in which water is impounded by a dam" (56 FR 1371, January 14, 1991).

Colorado proposed to extensively revise Rule 4.05.9 concerning the performance standards specific to impoundments. Colorado proposed to recodify and or revise Rule 4.05.9 as follows:

Rule 4.05.9(1) requiring that the design, construction and maintenance of all impoundments, including sedimentation ponds, sediment treatment facilities, or other treatment facilities shall be in compliance with Rule 4.05.9, and in compliance with all applicable Federal and State water quality standards;

Rules 4.05.9(2)(a) through (e) specifying the requirements for impoundment spillway systems;

Rule 4.05.9(3), identifying impoundments that must meet the design requirements of the State Engineer;

Rule 4.05.9(4), identifying impoundments that must meet the criteria of MSHA at 30 CFR 77.216(a);

Rule 4.05.9(5), requiring persons who impound water for a beneficial use to meet all applicable State laws;

Rule 4.05.9(6), requiring stability of embankments, foundations and abutments and a foundation investigation for those impoundments meeting the criteria of the State

Engineer, the size or other criteria of MSHA at 30 CFR 77.216(a) or the criteria of TR-60;

Rule 4.05.9(7) specifying requirements for all impoundment embankments;

Rules 4.05.9(8)(a) and (b), requiring safety factors for impoundments meeting the size or other criteria of MSHA at 30 CFR 77.216(a) or TR-60 (minimum safety factor of 1.5 and a seismic safety factor of at least 1.2) and those that do not (a minimum static safety factor of 1.3);

Rule 4.05.9(9), requiring the protection of embankments from erosion;

Rule 4.05.9(10), requiring adequate freeboard for all impoundments and specifying the freeboard hydrograph criteria for impoundments meeting the Class B or Class C criteria for dams in TR-60;

Rule 4.05.9(12), specifying that the vertical portion of any remaining highwall shall be located far enough below the low-water line, along the full extent of the highwall, to provide adequate safety and access for the proposed water users;

Rule 4.05.9(13)(a) through (f), concerning the bases for approval of a permanent impoundment;

Rule 4.05.9(14), specifying the inspection requirements for all impoundments;

Rule 4.05.9(15), specifying the contents of certified inspection reports;

Rule 4.05.9(17), specifying quarterly inspection requirements for certain impoundments;

Rules 4.05.9(18)(a) through (e) identifying those impoundments that can be exempted from the quarterly inspection requirements of Rule 4.05.9(17) with requirements specific to them;

Rule 4.05.9(19), identifying emergency procedures if an examination or inspection indicates a potential hazard;

Rule 4.05.9(20), requiring that examination of impoundments that meet the criteria of the State Engineer be in accordance with the requirements of the State Engineer; and

Rule 4.05.9(21), requiring that examination of impoundments meeting the size or other criteria of MSHA at 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 be in accordance with the requirements of 30 CFR 77.216-3.

Colorado's proposed revisions at Rule 4.05.9 that, with five exceptions having no Federal counterparts, are the same as or similar to the Federal regulations at 30 CFR 816.49 and 817.49 as follows:

Rule 4.05.9(1), 30 CFR 816/817.49

Rule 4.05.9(2), 30 CFR 816/817.49(a)(9)
 Rule 4.05.9(2)(a), 30 CFR 816/817.49(a)(9)(i)
 Rule 4.05.9(2)(a)(i), 30 CFR 816/
 817.49(9)(i)(A)
 Rule 4.05.9(2)(a)(ii), 30 CFR 816/
 817.49(a)(9)(i)(B)
 Rule 4.05.9(2)(b), no Federal counterpart
 Rule 4.05.9(2)(c), 30 CFR 816/817.49(a)(9)(ii)
 Rule 4.05.9(2)(c)(i), 30 CFR 816/
 817.49(a)(9)(ii)(B)
 Rule 4.05.9(2)(c)(ii), 30 CFR 816/
 817.49(a)(9)(ii)(C)
 Rule 4.05.9(2)(d), 30 CFR 816/
 817.49(a)(9)(ii)(A) and 30 CFR 816/
 817.49(a)(1)
 Rule 4.05.9(2)(e), 30 CFR 816/817.49(c)(2)
 Rule 4.05.9(2)(e)(i), 30 CFR 816/
 817.49(c)(2)(i)
 Rule 4.05.9(2)(e)(ii), 30 CFR 816/
 817.49(c)(2)(ii)
 Rule 4.05.9(3), no Federal counterpart
 Rule 4.05.9(4), 30 CFR 816/817.49(a)(2)
 Rule 4.05.9(5), no Federal counterpart
 Rule 4.05.9(6), 30 CFR 816/817.49(a)(6)(i)
 Rule 4.05.9(7)(a), 30 CFR 816/817.49(a)(6)(ii)
 Rule 4.05.9(7)(b), 30 CFR 816/
 817.46(c)(iii)(G, H, I)
 Rule 4.05.9(7)(c) through (e), 30 CFR 816/
 817.49(a)(7)
 Rule 4.05.9(8)(a), 30 CFR 816/817.49(a)(4)(i)
 Rule 4.05.9(8)(b), 30 CFR 816/817.49(a)(4)(ii)
 Rule 4.05.9(9), 30 CFR 816/817.49(a)(8)
 Rule 4.05.9(10), 30 CFR 816/817.49(a)(5)
 Rule 4.05.9(12), 30 CFR 816/817.49(a)(10)
 Rule 4.05.9(13)(a), 30 CFR 816/817.49(b)(2)
 and (6)
 Rule 4.05.9(13)(b), 30 CFR 816/817.49(b)(1)
 and (3)
 Rule 4.05.9(13)(c), 30 CFR 816/817.49(b)(4)
 Rule 4.05.9(13)(d), 30 CFR 816/817.49(b)(5)
 Rule 4.05.9(13)(e), 30 CFR 816/817.49(b)(1)
 Rule 4.05.9(13)(f), 30 CFR 816/817.49(b)(6)
 Rule 4.05.9(14), 30 CFR 816/817.49(a)(11)(i)
 Rule 4.05.9(15), 30 CFR 816/817.49(a)(11)(ii)
 and (iii)
 Rule 4.05.9(17), 30 CFR 816/817.49(a)(11)(iii)
 and (a)(12)
 Rule 4.05.9(18) (a through e), no Federal
 counterpart
 Rule 4.05.9(19), 30 CFR 816/817.49(a)(13)
 Rule 4.05.9(20), no Federal counterpart
 Rule 4.05.9(21), 30 CFR 816/817.49(a)(12)

Please note that (1) Colorado's counterpart to the Federal regulation at 30 CFR 816/817.49(a)(3) concerning certification of plans for impoundments is at existing Rule 2.05.3(4)(i) and (ii), and (2) Colorado's Rule 4.05.9(11), concerning routine maintenance of dams and embankments, and Rule 4.05.9(16), concerning emergency modification of a dam or impoundment, were existing rules that were only recodified with no revision and are not included in the above discussion and list.

All but five of Colorado's proposed revisions at Rule 4.05.9 are the same as or similar to the counterpart Federal regulations at 30 CFR 816.49 and 817.49 (the exceptions that have no Federal counterparts are discussed below in findings Nos. 10.A, 10.B, and 10.C). Therefore, the Director finds that the proposed revisions to Rule 4.05.9 identified in the above chart as being

the same as or similar to the counterpart Federal regulations (1) are as effective as the counterpart Federal regulations at 30 CFR 816.46, 816.49, 817.46 and 817.49 as identified in the chart above, and (2) satisfy the required amendments at 30 CFR 906.16(d) and (e). The Director approves them and removes the required amendments.

A. *Rule 4.05.9(2)(b), Design of impoundments with a combination of a principal and emergency spillway.* Colorado proposed at Rule 4.05.9(2)(b) that if an impoundment is designed and constructed with a combination of a principal and emergency spillways, there shall be no out-flow through the emergency spillway during the passage of runoff resulting from the 10-year 24-hour precipitation event, regardless of the volume of water and sediment directed to the impoundment from any underground working or surface pit (please note that OSM has previously found that Colorado's 10-year 24-hour event is equivalent to the 25-year 6-hour event specified in the Federal regulations). Colorado's proposed rules concerning impoundment spillways are otherwise the same as the Federal regulations at 30 CFR 816.49(a)(9) and 817.49(a)(9). There is no direct Federal counterpart to proposed Rule 4.05.9(2)(b). However, the proposed rule is consistent with the Federal regulations at 30 CFR 816.49(a)(9)(ii)(C) (and Colorado's proposed Rule 4.05.9(2)(c)(ii)), which require that impoundments designed and constructed with a combination of principal and emergency spillways safely pass the 10-year 24-hour precipitation event. Colorado's proposed Rule 4.05.9(2)(b) effectively requires an applicant to consider all sources of water that may flow into an impoundment when designing the capacity of the impoundment. For these reasons, the Director finds that proposed Rule 4.05.9(2)(b) is as effective as the Federal regulations concerning impoundment spillway design at 30 CFR 816.49(a)(9) and 817.49(a)(9). The Director approves Rule 4.05.9(2)(b).

B. *Rules 4.05.9(3), (5) and (20), Impoundments which must meet the requirements of other State laws.* Colorado's proposed Rules 4.05.9 (3) and (20) require impoundments that meet the specifications of the State Engineer to be designed and inspected in accordance with the requirements of the State Engineer. Colorado's proposed Rule 4.05.9(5) requires persons who impound water for a beneficial use to meet all applicable State laws. There are no counterpart Federal regulations. However, the Federal regulations concerning permits on Federal lands at

30 CFR 740.13(a)(2) require that every person conducting surface coal mining and reclamation operations on Federal lands comply with, among other things, all other applicable State and Federal laws and regulations. The Director finds that Colorado's proposed Rules 4.05.9(3), (5), and (20), concerning impoundments that must comply with other State laws, are consistent with and as effective as the Federal regulations at 30 CFR 740.13(a)(2). The Director approves proposed Rules 4.05.9(3), (5), and (20).

C. *Rules 4.05.9(18) (a) through (e), Allowance for exemption of certain impoundments from the requirements for quarterly examinations.* Colorado proposed new language at Rule 4.05.9(18) allowing Colorado to approve a waiver of the quarterly impoundment examinations required in Rule 4.09.9(17) for certain impoundments, if the permittee demonstrates in writing that failure of the impoundments will not create a threat to public health and safety or threaten significant environmental harm. The written safety demonstration must be submitted by a professional engineer, as part of a permit application (proposed Rule 4.05.9(18)(b)). Prior to approving the waiver, Colorado must conduct a field inspection to verify the adequacy of the safety demonstration (proposed Rule 4.05.9(18)(d)). The proposed rule also allows the annual inspection of the impoundments that are exempt from quarterly examinations to be conducted by a qualified person other than a professional engineer (proposed Rule 4.05.9(18)(c)).

Impoundments which may qualify for Colorado's approval of the waiver from quarterly examinations must not be the primary sediment control for a particular area, must be located in reclaimed areas to enhance the postmining land use and must be either completely incised or must not exceed 2 acre-feet in capacity nor have embankments larger than 5 feet in height measured from the bottom of the channel (as measured vertically from the upstream toe of the embankment to the bottom of the spillway; proposed Rule 4.05.9(18)(a)). If a waiver is approved, Colorado must periodically inspect the impoundments and areas downstream to verify that the safety demonstration remains adequate (proposed Rule 4.05.9(18)(e)). Colorado may terminate an approved waiver, for good cause, if conditions of the impoundment or conditions downstream from the impoundment are such that failure of the impoundment will create a threat to public health and safety or threaten significant

environmental harm (proposed Rule 4.05.9(18)(e)).

Because, with the exception of those rules requiring quarterly examinations and the annual inspection to be conducted by a professional engineer, all rules in the Colorado program concerning impoundments would apply to these impoundments constructed in the reclaimed environment, these small impoundments would (1) be shown on a map as required at Rule 2.04.7(4)(e); (2) have general and detailed plans prepared by a professional engineer as required by Rule 2.05.3(4); (3) be subject to the design requirements for impoundments at Rule 4.05.9; and (4) be subject to the requirements at proposed Rule 4.05.9(14)(a) for an inspection by a professional engineer during and upon completion of construction.

Colorado stated in its "Statement of Basis, Specific Statutory Authority, and Purpose" that the impoundments described in proposed Rule 4.05.9(18) are typically constructed at Colorado mine sites to enhance the postmining land uses of rangeland and wildlife habitat and are considered beneficial features in mine site reclamation plans.

The Federal regulations at 30 CFR 816.49(a)(11) and (12) and 817.49(a)(11) and (12), concerning the inspection of impoundments, do not provide for exemptions. However, OSM Directive No. TSR-2, Transmittal No. 375, dated September 14, 1987, entitled "Quarterly Examination of Water Impoundments," exempts impoundments constructed without an embankment from the quarterly examination requirement since there is no embankment to examine for structural weaknesses or other hazardous conditions. This directive is applicable to the evaluation of State programs as well as to the implementation, administration and enforcement of a Federal program. That portion of Colorado's proposed Rule 4.05.18(a) which allows a waiver of quarterly examination for completely incised impoundments is consistent with the OSM Directive No. TSR-2.

Colorado's proposed Rule 4.05.18 is also consistent with precedent set by OSM's approval of a similar amendment to the Illinois permanent regulatory program. OSM approved in Illinois a rule exempting from quarterly inspections impounding structures that impound water to a design elevation not more than 5 feet above the upstream toes of the structure and have a storage volume of not more than 20 acre-feet (see finding No. 9, 56 FR 64966, 64968, December 13, 1991), OSM's approval in Illinois was based, in part, on Illinois' requirements that (1) an application for the exemption contain a report sealed

by a professional engineer which finds that the structure would pose no threat to life, property or the environment, (2) Illinois would field verify the report prior to approval and periodically thereafter, and (3) Illinois would terminate the exemption if warranted. Colorado's proposed Rule 4.05.9(18) contains similar provisions yet would apply to smaller impounding structures (those that impound water to a design elevation not more than 5 feet above the upstream toes of the structure and have a storage volume of not more than 2, not 20, acre-feet).

Based on the above discussion, the Director finds that Colorado's proposed Rule 4.05.9(18) is as effective as the Federal regulations at 30 CFR 816.49(a)(11) and (12) and 817.49(a)(11) and (12) and approves it.

11. Rules 4.05.18(1)(a) Through (c), Stream Buffer Zone

Colorado proposed to revise Rule 4.05.18, concerning stream buffer zones, by revising Rules 4.05.18(1)(a) through (c) and deleting Rule 4.05.18(3) so that Rule 4.05.18 is the same as the Federal regulations at 30 CFR 816.57 and 817.57. For this reason, the Director finds that Colorado's proposed Rules 4.05.18 is as effective as the Federal regulations at 30 CFR 816.57 and 817.57 and approves it.

12. Rule 1.04(93a), Definition of "Point of Compliance," and Rules 2.05.6(3)(b)(iv), 4.05.13(1)(a) Through (c), 4.21.4(10) and 4.28.3(16), Ground Water Monitoring

Colorado proposed to add or revise Rules 1.04(93a), 2.05.6(3)(b)(iv), 4.05.13(1)(a) and (b), 4.21.4(10), and 4.28.3(16), concerning addition of a definition for "Point of compliance" and revising requirements for a hydrologic monitoring plan, ground water monitoring, coal exploration, and coal processing plants and support facilities, to include requirements for ground water monitoring at points of compliance.

Colorado proposes at Rule 1.04(93a) to define "Point of compliance" to mean:

any geographic location at which compliance with applicable ground water quality standards established by the Water Quality Control Commission must be attained and where this compliance will be demonstrated by compliance monitoring of the groundwater or by other valid means approved by the Division.

Colorado's proposed revision of its rules, in effect, adds detailed provisions requiring operators to monitor for and be in compliance with State ground water quality standards at specific

points of compliance. With respect to ground water monitoring at points of compliance, these rules have no direct counterpart in the Federal regulations.

Colorado, in order to ensure that the State ground water quality program concerning points of compliance was adequately administered, was obligated by State law to define and include ground water quality points of compliance in the Colorado program. Colorado's existing requirements for ground water monitoring, counterpart to the Federal regulations at 30 CFR 780.21(c) and 816.41 and 817.41, are in Rules 4.05.13(1)(a) and (c). OSM finds that Colorado's proposed requirements for ground water monitoring at points of compliance are separate from, and may be in addition to, the SMCRA-mandated ground water monitoring requirements. OSM bases this interpretation on the language in proposed Rules 4.05.13(1)(a) and (b) where Colorado states, respectively, that "ground water shall be monitored in a manner approved by the Division, including but not limited to specific points of compliance" and "[t]hese points of compliance shall be monitoring locations in addition to any other monitoring points required by the Division." Also, at proposed Rule 4.05.13(1)(b)(iii), concerning ground water monitoring for points of compliance, Colorado states "[m]onitoring points established under 4.05.13(1)(c) [counterpart to SMCRA-mandated monitoring] may be utilized for this purpose, when appropriate." By these statements in the proposed rules concerning points of compliance, Colorado has distinguished between OSM's requirements for ground water monitoring and the requirements in its program for a ground water monitoring program in compliance with the Colorado Water Quality Control Commission's requirements.

The Federal regulations at 30 CFR 816.41(c)(1) and 817.41(c)(1) require that ground-water monitoring be conducted according to the ground-water monitoring plan approved under 30 CFR 780.21(i) and provide that the regulatory authority may require additional monitoring when necessary. The requirement for additional ground water monitoring in Colorado's program proposed at Rules 1.04(93a), 2.05.6(3)(b)(iv), 4.05.13(1)(a) and (b), 4.21.4(10), and 4.28.3(16) is consistent with the Federal regulations at 30 CFR 780.21(i)(2) and (j)(2), 816.41(c)(1) and 817.41(c)(1), 815.15(i), and 827.12(c), all of which require monitoring in compliance with other State and Federal laws. In addition, the Federal regulations at 30 CFR 816.42 and 817.42 mandate that all discharges (including

ground water discharges) must be made in compliance with all applicable State and Federal water quality control laws and regulations. Colorado's proposed addition of rules concerning ground water monitoring for points of compliance ensures that all State ground water monitoring requirements are followed by operators and enforced under the Colorado program, which clearly is consistent with the goals of the Federal program at 30 CFR 816.41 and 817.42.

Based on the above discussion, the Director finds that Colorado's proposed Rules 1.04(93a), 2.05.6(3)(b)(iv), 4.05.13(1)(a) and (b), 4.21.4(10), and 4.28.3(16) are consistent with and as effective as the Federal regulations at 30 CFR 816.41 and 817.42 and approves them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (administrative record No. CO-691-1), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Colorado program (administrative record no. CO-691-1).

By memorandum dated June 26, 2000 (administrative record No. NM-691-3), the U.S. Department of Interior, Fish and Wildlife Service (FWS), commented that (1) it is the policy of FWS to require formal section 7 consultation under the Endangered Species Act of 1973, as amended, if there is any water depletion associated with mining and related activities (e.g., sediment pond or other pond development) in the Upper Colorado River Basin; (2) ponds below 6,500 feet elevation, and deeper than 1 foot, that are connected to waterways are considered a potential non-native fish source and outlets must be screened, or if within the 50 year flood plain, must be screened and or bermed (with potential for section 7 consultation if this is not thought to be possible); and (3) Colorado's proposed rules concerning the 100 foot buffer zone should be revised to provide for a 300 foot buffer zone because this would better protect riparian ecosystem that may occur adjacent to the stream.

With respect to the FWS comments concerning water depletion, potential non-native fish source and section 7 consultation requirements, Colorado's existing Rule 2.04.11 concerning fish and wildlife resource information,

requires that Colorado consult with the appropriate State and Federal fish and wildlife management, conservation, or land management agencies having responsibilities for fish and wildlife or their habitats. Colorado's existing Rule 2.05.6(2) requires the permit applicant to submit a fish and wildlife plan and existing Rule 2.05.6(2)(b) requires that Colorado submit this plan to the FWS for review within 10 days upon request by the FWS.

With respect to the FWS comment requesting that Colorado's proposed Rule 4.05.18 require a 300 foot rather than a 100 foot stream buffer zone, the counterpart Federal regulations at 30 CFR 816.57 and 817.57 require a 100 foot stream buffer zone.

As discussed under the Director's findings above, the Colorado rules proposed in this amendment are no less effective than the counterpart Federal regulations. OSM can only require that the Colorado program contain rules no less effective than the counterpart Federal regulations. For this reason, the Director is taking no further action in response to these comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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 this amendment pertain to air or water quality standards. Therefore, we did not ask EPA's to agree on the amendment. However, under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (administrative record No. CO-691-1). EPA did not respond to our request.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 25, 2000, we requested comments on Colorado's amendment (administrative record No. CO-691-1), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment sent to us by Colorado on May 12, 2000.

We approve, as discussed in:

Finding No. 1, Rules 1.04(71), (81a), (86a) and (137a), concerning the definitions of land use, other treatment facilities, permanent impoundment and temporary impoundment;

Finding No. 2, Rule 1.04(115), concerning the definition of sedimentation pond;

Finding No. 3, Rules 2.05.3(4), (4)(a)(iii), (iv), (v) and (vii), and (4)(b), concerning the reclamation plan requirements for sedimentation ponds and other treatment facilities, impoundments, banks, dams and embankments;

Finding No. 4, Rules 2.05.3(8)(a)(iii), (iv), (v) and (vi), concerning coal mine waste and non-coal processing waste banks, dams, or embankments;

Finding No. 5, Rules 2.07.3(3)(b) and (c), concerning the time frame for written comments on technical revisions;

Finding No. 6, Rules 1.04(31a) and 2.07.6(2)(c), concerning the definition of cumulative impact area and the criteria for permit approval or denial;

Finding No. 7, Rules 4.05.2(1), (2), (3)(a), (4), (5) and (6), concerning performance standards for sedimentation ponds and other treatment facilities;

Finding No. 8, Rule 4.05.6, concerning the general requirements for sedimentation ponds and other treatment facilities;

Finding No. 9, Rule 4.05.7, concerning requirements for discharge structures;

Finding No. 10, Rule 4.05.9, concerning the performance standards for impoundments;

Finding No. 11, Rules 4.05.18(1)(a) through (c), concerning protection of stream buffer zones; and

Finding No. 12, Rules 1.04(93a), 2.05.6(3)(b)(iv), 4.05.13(1)(a) through (c), 4.21.4(10) and 4.28.3(16), concerning the definition of point of compliance and ground water monitoring at points of compliance.

We approve the rules as proposed by Colorado with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 906, which codify decisions concerning the Colorado program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage States to make their programs conform with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory

programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

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.*).

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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of \$100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on any local, State, or Tribal governments or private entities.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 3, 2000.

Brent T. Wahlquist,
Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 906 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 06.15 is amended in the table by adding a new entry in chronological order by “date of final publication” to read as follows:

§ 906.15 Approval of Colorado regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
May 12, 2000	November 24, 2000	Rules 1.04 (31a), (71), (81a), (86a), (93a), (115) and (137a); 2.05.3(4), (4)(a)(iii), (iv), (v) and (vii), and (4)(b); 2.05.3(8)(a)(iii), (iv), (v) and (vi); 2.07.3(3)(b) and (c); 2.07.6(2)(c) and (3)(b)(iv); 4.05.2(1), (2), (3)(a), (4), (5) and (6); 4.05.6; 4.05.7; 4.05.9; 4.05.13(1)(a) through (c); 4.05.18(1)(a) through (c); 4.21.4(10) and 4.28.3(16).

3. Section 906.16 is amended by removing and reserving paragraphs (d) and (e).

[FR Doc. 00-29970 Filed 11-22-00; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX-047-FOR]

Texas Regulatory Program

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

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to and additions of regulations concerning remining, coal processing plants, and procedures for processing petitions to designate lands as unsuitable for mining. Texas intends to revise its program to be consistent with the corresponding Federal regulations.
EFFECTIVE DATE: November 24, 2000.
FOR FURTHER INFORMATION CONTACT: Michael C. Wolfstrom, Director, Tulsa

Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548. Telephone: (918) 581-6430. Internet: mwolfstrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Amendment

By letter dated August 24, 2000 (Administrative Record No. TX-650.01), Texas sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Texas sent the amendment in response to our letter dated November 22, 1999 (Administrative Record No. TX-650), that we sent to Texas under 30 CFR 732.17(c). The amendment also includes changes made at Texas' own initiative.

We announced receipt of the amendment in the September 12, 2000, **Federal Register** (65 FR 54982). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on October 12, 2000. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment to the Texas program.

Any revisions that we do not discuss below concern minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Texas' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation	Federal counterpart regulation
Initial processing procedures	TAC 12.80(a)(1)	30 CFR 764.15(a)(1)
Backfilling and grading: General grading requirements.	TAC 12.385(e)-(e)(2)(D) and TAC 12.552(e)-(e)(2)(D).	30 CFR 816.106(a)-(b)(4) and 30 CFR 817.106(a)-(b)(4)
Coal processing plants: Performance standards	TAC 12.651(13)	30 CFR 827.12(l)

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

B. Revisions to Texas' Regulations That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. TAC § 12.385(a) Backfilling and Grading: General Grading Requirements.

Texas proposed to remove the following language from this paragraph:

The requirements of this section may be modified by the Commission where the surface mining activities are reffecting previously mined lands that have not been restored to the standards of §§ 12.330-12.384, this section, and §§ 12.386-12.403 of this title (relating to Permanent Program Performance Standards—Surface Mining

Activities) and sufficient spoil is not available to otherwise comply with this section.

We are approving the removal of this language because it is not as effective as the Federal regulations at 30 CFR 816.106 concerning the backfilling and grading of previously mined areas. Also, in this rulemaking, Texas proposed and we are approving an amendment to its regulations that include provisions for backfilling and grading of previously mined areas that are as effective as the Federal regulations. Please refer to the table listed in III. Director's Findings, A. Backfilling and grading: General grading requirements.

2. TAC § 12.552(a) Backfilling and Grading: General Grading Requirements.

Texas proposed to remove the following language from this paragraph:

The requirements of this section may be modified by the Commission where the surface mining activities are reffecting previously mined lands that have not been restored to the standards of §§ 12.500-12.551, this section, and §§ 12.553-12.572 of this title (relating to Permanent Program Performance Standards—Underground Mining Activities) and sufficient spoil is not available to otherwise comply with this section.

We are approving the removal of this language because it is not as effective as the Federal regulations at 30 CFR 817.106 concerning the backfilling and grading of previously mined areas. Also, in this rulemaking, Texas proposed and