DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SATS No. CO–040–FOR; Docket ID: OSM–2011–0002; S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520]

Colorado Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Colorado regulatory program (Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Colorado proposed both additions to and revisions of the rules and regulations of the Colorado Mined Land Reclamation Board for Coal Mining concerning valid existing rights, ownership and control, and other regulatory issues. Additionally, Colorado proposed revisions to and additions of definitions supporting those proposed rule changes. Colorado revised its program to be consistent with SMCRA and the corresponding Federal regulations, clarify ambiguities, address all outstanding required rule changes, and improve operational efficiency.

DATES: The effective date is October 3, 2019.

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SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Submission of the Amendment
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I. Background on the Colorado Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, state laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. 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 Amendment

By letter dated April 11, 2011, Colorado sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM–2011–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the amendment to address all required rule changes. Consistent with 30 CFR 732.17(c), OSMRE had previously notified Colorado of these required rule changes by letters dated April 2, 2001, April 4, 2008, and October 2, 2009. The letters identified required amendments to Colorado's rules for valid existing rights (VER), outstanding issues raised by OSMRE during its 30 CFR part 732 oversight process, and ownership and control, respectively.

Colorado proposed revisions to its rules for VER in response to a letter we sent to the State pursuant to 30 CFR part 732 (a ''732 letter'') on April 2, 2001. On January 15, 2008, in *National Mining Association* v. *Kempthorne,* 512 F.3d 702 (D.C. Cir.), the United States Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision to uphold VER and associated rules, which OSMRE promulgated on December 17, 1999 (64 FR 70766). Because the VER rules were challenged in Federal court on several fronts, OSMRE informed Colorado that the State could defer responding to our April 2, 2001, 732 letter pending the outcome of the litigation. Because the litigation is now settled, this amendment package includes the required revisions to Colorado's rules for VER.

On October 28, 1994 (59 FR 54306), December 19, 2000 (65 FR 79581), and December 3, 2007 (72 FR 67999), OSMRE promulgated final rules pertaining to ownership and control (O and C), including the review of applications; permit eligibility; application information; applicant, operator, and permittee information; automated information entry and maintenance; permit suspension and rescission; ownership and control findings and challenge procedures; transfer, assignment, or sale of permit rights; and alternative enforcement. OSMRE sent the Colorado Division of Reclamation, Mining and Safety (the Division) two 732 letters (May 11, 1989, and January 12, 1997) concerning O and C. Again, because of ongoing litigation, OSMRE advised the Division to defer response to the letters pending the outcome of the litigation. On October 2, 2009, OSMRE notified the Division that the litigation had concluded and a response to the 732 letters would be required. This amendment package includes the required revisions to Colorado's rules for O and C.

OSMRE sent a letter to Colorado on April 4, 2008, notifying the Division that the State had not updated its program in accordance with 30 CFR part 732. This included deficient rules identified in earlier 732 letters that OSMRE sent to Colorado on May 7, 1986; June 5, 1996; and June 19, 1997. This amendment package includes all other required rule changes in the above-mentioned 732 letters and changes made at Colorado's own initiative.

We announced receipt of the proposed amendment in the June 21, 2011, **Federal Register** (76 FR 36039). 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 (Administrative Record No. OSM–2011–0002–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 21, 2011. We received comments from one Federal agency.

As a result of those comments, we identified concerns regarding Colorado's jurisdiction over public roads, particularly National Forest System Roads. We notified Colorado of these concerns by letter dated September 19, 2011 (Administrative Record Document ID No. OSM–2011–0002–0008).

Colorado responded in a letter dated September 22, 2011, by sending us a revised amendment and additional explanatory information (Administrative Record Document ID No. OSM–2011–0002–0013).

Based on Colorado's revisions to its amendment, we reopened the public comment period in the December 6, 2011, **Federal Register** (76 FR 76109); (Administrative Record No. OSM–2011–0002–0010), and provided an opportunity for a public hearing or meeting on the adequacy of the revised amendment. We did not hold a public hearing or meeting because no one requested one. The public comment

period ended on January 5, 2012. We did not receive any comments.

During our review of Colorado's revised April 11, 2011, formally proposed amendment, OSMRE found additional deficiencies and notified Colorado of these deficiencies in a letter dated May 20, 2013 (Administrative Record No. OSM–2011–0002–0017). In response to our concerns, Colorado addressed all deficiencies in a revised formal amendment package submitted on October 1, 2014 (Administrative Record Nos. OSM–2011–0002–0014 (Cover Letter), OSM–2011–0002–0015 (Proposed Revisions), and OSM–2011–0002–0016 (Statement of Basis and Purpose)). We explain our concerns and Colorado's responses thereto in detail in Sections III.B. and III.C. of this document. We announced receipt of the proposed amendment in the January 22, 2015, **Federal Register** (80 FR 3190). In the same document, we reopened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM–2011–0002–0018). We did not hold a public hearing or meeting because no one requested one.

III. OSMRE's Findings

Title 30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR part 700. In 30 CFR 730.5, OSMRE defines ''consistent with'' and ''in accordance with'' to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in satisfying the requirements of SMCRA.

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

A. Minor Revisions to Colorado's Rules

Colorado proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously approved rules. Because the proposed revisions to these previously approved rules are minor, we are approving the changes and find that they are no less effective than the corresponding Federal regulations.

- 1.03.2(4)—Responsibilities;
- 1.04(1.1), (5), (17.1), (22.1), (27), (31.1), (31.2), (31.3), (38), (41), (43.1), (46.1), (47.1), (56), (57), (63.1), (71), (71)(i), (71.1), (71.2), (71.2)(a), (71.2)(b), (71.2)(c), (83.2), (86.1), (93.1), (95), (96), (103.1), (108.1), (117), (120), (125), (128), (135), (135.1), (137.1), (140), (148), (149)(a), (149)(b), (149)(b)(i), (149)(b)(ii), (149)(b)(iii), (149)(b)(iv), (149.1)(b), (149.2), (149.2)(a), (149.2)(b), (153), and (153)(b)—Definitions;
- 1.08, 1.08(2), and 1.08(5)—Notice of Citizen Suits;
- 1.09—Availability of Records;
- 1.10—Computation of Time;
- 1.11, 1.11.1, 1.11.2, 1.11.3, 1.11.3(1), 1.11.4, 1.11.5, 1.11.6, 1.11.7, 1.11.8, and 1.11.9—Restrictions on Employee Financial Interests;
- 1.12—Requests to the Board;
- 1.13—Water Rights;
- 1.14—Limitation on the Effect of Regulations Required by Federal Law, Rules, or Regulations Which Become Ineffective;
- 1.15—Declaratory Orders;
- 1.16, 1.16.1, 1.16.2, 1.16.3, 1.16.3(2), and 1.16.4—Guidelines;
- 2.02.3(1)(c)(v), (1)(c)(vi), and (1)(e)—General Requirements: Exploration Involving Removal of More Than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining;
- 2.03.3(4)—Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Legal, Financial, Compliance and Related Information;
- 2.03.5(1)(b)(i) through (1)(b)(vi) and (1)(c)(i) through (1)(c)(vi)—Compliance Information;
- 2.03.7(3)—Relationship to Areas Designated Unsuitable for Mining;
- 2.04.5(1)—General Description of Hydrology and Geology;
- 2.04.6(2)(b)(iv) and 2.04.6(3)(a)—Geology Description;
- 2.04.12(1), (2)(f), (5), and (5)(b)—Prime Farmland Investigation;
- 2.05.3(3)(c)(ii), 2.05.3(4)(a)(vi) and (vii), 2.05.3(8), (8)(a),(8)(a)(v), and (8)(a)(vi)—Application for Permit for Surface or Underground Mining Activities—Minimum Requirements for Operation and Reclamation Plans;
- 2.05.6(4)(a)—Mitigation of the Impacts of Mining Operations;
- 2.06.8(1), (5)(b)(ii)(B), (5)(b)(ii)(B)(I), and (5)(b)(ii)(B)(II)—Surface Coal Mining and Reclamation Operations on Areas, or Adjacent to Areas, Including Alluvial Valley Floors;
- 2.07.1(2) and (3)—Public Participation and Approval of Permit Applications—Scope;
- 2.07.4(3)(g) and (h)—Division and Board Procedures for Review of Permit Applications;
- 2.07.6(1)(a)(i)—Criteria for Review of Permit Applications for Permit Approval or Denial;
- 2.07.6(2)(d)(iv)—Public Participation and Approval of Permit Applications—Criteria for permit approval or denial;
- 2.07.6(2)(f), (j), (k), and (l); Criteria for Review of Permit Applications for Permit Approval or Denial;
- 2.08.4(5), (6), and (6)(a)—Revisions to a Permit;
- 2.08.5(1)(d)—Right of Successive Renewal;
- 2.08.6(4)(a)—Transfer, Assignment or Sale of Permit Rights;
- 4.05.3(6)—Hydrologic Balance;
- 4.05.9(2)(d), (2)(e)(i), (4), (6), (8), (10), and (21)—Impoundments;
- 4.05.13(1)(a)—Surface and Ground Water Monitoring;
- 4.07.3(2), (2)(a), (2)(b), (2)(c), and (2)(c)(i) through (ix)—Exploration Holes, Drill Holes, Boreholes, or Wells;
- 4.08.1(4)(a)(i)—Use of Explosives; General Requirements;
- 4.08.2(1) and (2)—Pre-blasting Survey;
- 4.08.4(6)(a), (7)(a), (10), and (10)(c)(i)—Surface Blasting Requirements;
- 4.08.5(4)—Records of Blasting for Surface Coal Mining Operations;
- 4.09.1(12), .3, and .3(1)—Disposal of Excess Spoil;
- 4.10.2(1) and (2)(a)—Coal Mine Waste Banks; Site Inspection;
- 4.10.4(1), (3)(b), and (5)—Coal Mine Waste Banks; Construction Requirements;
- 4.11.3—Return to Underground Workings;
- 4.11.5(3)(a)(i)—Dams and Embankments;
- 4.15.7(5)(b)– Determining Revegetation Success: General Requirements and Standards;
- 4.17—Air Resource Protection;
- 4.18(5)(k)—Protection of Fish, Wildlife, and Related Environmental Values;
- 4.22.4(1)(b)—Concurrent Surface and Underground Mining;
- 4.25.2(3), .3, .3(2), .5(3), .5(3)(b)(i), and .5(3)(b)(ii)—Operations on Prime Farmland;
- 4.30.1(2)(b)—Cessation of Operations;
- 5.02.2(4)(a) and (8)(a)(v)—Frequency, Time and Manner of Inspections;
- 5.03.2(2)(e), (4)(a)(ii), and (5)(c)—Enforcement; Cessation Orders and Notices of Violation;
- 5.03.5(1)(d)—Formal Review by the Board;

- 5.04 and 5.04.3(5)(a)—Civil Penalties; and
- 6.04(1)(f)—Suspension or Revocation of Certifications.

Because these changes are minor, we find that they will not make Colorado's rules less effective than the corresponding Federal regulations, and we approve the proposed revisions.

B. Revisions to Colorado's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations.

Colorado proposed additions and revisions to several rules containing language that is the same as or having similar meaning to the corresponding sections of the Federal regulations and/or SMCRA. Because OSMRE finds these additions and revisions to be minor and that they do not impact the meaning or intent of the regulations, we find the amendments referenced below to be no less stringent than the Act and no less effective than the applicable regulations. Therefore, we are approving the following Colorado non-substantive revisions;

- Rule 1.04(11.1); Definitions, ''Applicant/Violator System'' or ''AVS''; [30 CFR 701.5];
- Rule 1.04(30.1); Definitions, ''Control'' or ''Controller''; [30 CFR 701.5];
- Rule 1.04(77); Definitions, ''Noncommercial Building''; [30 CFR 701.5];
- Rule 1.04(79); Definitions, ''Occupied Residential Dwelling''; [30 CFR 701.5];
- Rule 1.04(83.1); Definitions, ''Own'', ''Owner'', or ''Ownership''; [30 CFR 701.5];
- Rules 1.04(118.1) and (118.1)(a) through (d); Definitions, ''Significant Recreational, Timber, Economic, or Other Values Incompatible with Surface Coal Mining Operations''; [30 CFR 761.5];
- Rule 1.04(141); Definitions, ''Transfer, Assignment, or Sale of Rights''; [30 CFR 701.5];
- Rule 1.04(146); Definitions, ''Unwarranted Failure''; [30 CFR 722.16(b)(3)];
- Rules 1.04(149), (149)(a)(i), (149)(a)(ii)(A), Definitions, ''Valid existing rights''; [30 CFR 701.5];
- Rules 1.04(149.1), (149.1)(a), and (149.1)(b), and (149.1)(b)(i) through (b)(v)(C); Definitions, ''Violation''; [30 CFR 701.5];
- Rules 1.07(1), (1)(a), (1)(a)(i) through (a)(iv), and (a)(vi) through (a)(ix); Procedures for Valid Existing Rights Determinations, Property Rights Demonstration; [30 CFR 761.16(b)(i)];
- Rules 1.07(1)(b) and (b)(i) through (iii); Procedures for Valid Existing Rights Determinations, Good Faith/All Permits Demonstration; [30 CFR 761.16(b)(2)];
- Rule 1.07(1)(c); Procedures for Valid Existing Rights Determinations, Needed for and Adjacent to Demonstration; [30 CFR 761.16(b)(3)];
- Rules 1.07(1)(d) and (d)(i) through (iii); Procedures for Valid Existing Rights Determinations, Standards for Roads Demonstration; [30 CFR 761.16(b)(4)];
- Rules 1.07(2) and (2)(a) through (2)(d); Procedures for Valid Existing Rights Determinations, Initial Review of Request; [30 CFR 761.16(c)];
- Rules 1.07(3), (3)(a)(i) through (a)(iii)(A), (a)(iii)(B), (a)(iii)(C), and (a)(iii)(D); Procedures for Valid Existing Rights Determinations, Notice and Comment Requirements and Procedures; [30 CFR 761.16(d)];
- Rules 1.07(3)(a)(iv) through (vii); Procedures for Valid Existing Rights Determinations, Notice and Comment Requirements and Procedures; [30 CFR 761.16(d)];
- Rules 1.07(3)(b), (b)(i), (b)(ii), and (c); Procedures for Valid Existing Rights Determinations, Notice and Comment Requirements and Procedures; [30 CFR 761.16(d)];
- Rules 1.07(4) and (4)(a) through (4)(c), (4)(c)(i), (4)(c)(ii), and (4)(d); Procedures for Valid Existing Rights Determinations—How a decision will be made; [30 CFR 761.16(e)];
- Rule 1.07(6); Procedures for Valid Existing Rights Determinations—Availability of records; [30 CFR 761.16(g)];
- Rule 2.01.3; General Requirements for Permits for All Surface Coal Mining and Reclamation Operations; [30 CFR 773.4(a)];
- Rule 2.02.2(1); Exploration Involving Removal of 250 Tons or Less of Coal; [30 CFR 772.11(a)];
- Rule 2.02.3(1)(g); General Requirements: Exploration Involving Removal of More Than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining; [30 CFR 772.12];
- Rules 2.02.4 and .4(3)(d); Applications: Approval or Disapproval of Exploration Involving Removal of More Than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining; [30 CFR 772.12(d)(2)(iv)];
- Rule 2.02.5; Applications: Notice and Hearing for Exploration Involving Removal of More Than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining; [30 CFR 772.12(e)];
- Rule 2.03.3(10); Format and Supplemental Information; [30 CFR 773.7(b)];
- Rules 2.03.4 and 2.03.4(2) through .4(2)(d); Identification of Interests; [30 CFR 778.11];
- Rules 2.03.4(3)(a), (3)(a)(i), (3)(a)(iii), and (3)(a)(iv); Identification of Interests; [30 CFR 778.12(c)];
- Rule 2.03.4(10); Identification of Interests; [30 CFR 778.11(e)];
- Rule 2.03.4(11), (11)(a), and (11)(b); Identification of Interests; [30 CFR 773.8(a), (b), and (c)];
- Rules 2.03.4(12)(a), (b)(i), and (b)(ii); Identification of Interests; [30 CFR 773.9 and 773.10];
- Rules 2.03.5(1)(a), (1)(a)(i), and (1)(a)(ii); Compliance Information; [30 CFR 778.14(a)];
- Rules 2.03.5(2)(a) through (d); Compliance Information; [30 CFR 773.11];
- Rules 2.03.5(3)(a), (a)(i) through (a)(iii), (b), and (c); Compliance Information; [30 CFR 778.9];
- Rules 2.04.5(1)(a) and (b); General Description of Hydrology and Geology; [30 CFR 780.21(c)(2)];
- Rule 2.05.4(2)(c); Reclamation Plan; [30 CFR 780.18(b)(8)];
- Rules 2.06.6(2)(a)(i), (3), (4), and (4)(b); Requirements for Permits for Special Categories of Mining [30 CFR 785.17];
- Rules 2.07.1(4) and (5); Public Participation and Approval of Permit Applications—Scope; [30 CFR 773.21 and 774.1];
- Rule 2.07.4(2)(f); Division and Board Procedures for Review of Permit Applications; [30 CFR 773.19(b)(2)];
- Rule 2.07.4(3)(d)(iv); Division and Board Procedures for Review of Permit Applications; [30 CFR 775.11(b)(2)(iv)];
- Rule 2.07.4(3)(f); Division and Board Procedures for Review of Permit Applications; [30 CFR 775.11(b)(3)(iii)];
- Rule 2.07.6(2)(d)(v), Criteria for Review of Permit Applications for Permit Approval or Denial; [30 CFR 761.15];
- Rule 2.07.6(2)(d)(vi); Criteria for Review of Permit Applications for Permit Approval or Denial; [30 CFR 761.11(c)];
- Rules 2.07.6(2)(e), (e)(i), and (e)(ii); Criteria for Review of Permit Applications for Permit Approval or Denial; [30 CFR 773.15(c)(1) and (2)];
- Rule 2.07.6(2)(g); Criteria for Review of Permit Applications for Permit Approval or Denial; [30 CFR 773.15(n)];
- Rules 2.07.8(1) and (1)(a); Improvidently Issued Permits—Initial review and finding requirements for improvidently issued permits; [30 CFR 773.21(a)];

• Rules 2.07.8(3)(a) through (d); Improvidently Issued Permits—Suspension or rescission requirements for improvidently issued permits; [30 CFR 773.23];

• Rules 2.07.9, .9(1)(a) through (d), .9(2), .9(4), .9(5)(a) and (b), .9(7), and .9(8); Post-permit issuance requirements for the Division and other actions based on ownership, control, and violation information; [30 CFR 774.11];

• Rules 2.07.10, .10(1), and .10(2); Post-permit issuance information requirements for permittees; [30 CFR 774.12(c)(1) and (2)];

• Rule 2.08.5(1)(b); Right of Successive Renewal; [30 CFR 774.15(b)(4)];

• Rules 2.11, 2.11.1, and 2.11.1(1) through (3); Who may challenge ownership or control listings and findings; [30 CFR 773.25];

• Rules 2.11.2, .2(1), .2(1)(a), .2(1)(b), and .2(2) through (5); How to challenge an ownership or control listing or finding; [30 CFR 773.26];

• Rules 2.11.3, .3(1)(a), .3(1)(b), .3(2), .3(3)(a) through (c), and .3(3)(d) through .3(3)(d)(iii); Burden of proof for ownership or control challenges; [30 CFR 773.27];

• Rule 4.08.4(4); Surface Blasting Requirements; [30 CFR 816.64/817.64];

• Rule 4.15.1(2)(b); Revegetation—General Requirements; [30 CFR 816.111(a)(4)/817.111(a)(4)];

• Rules 4.15.7(2)(d) and (d)(ii); Determining Revegetation Success: General Requirements and Standards; [30 CFR 816.116(a)(1)/817.116(a)(1)];

• Rule 5.03.2(5)(e); Enforcement—Cessation Orders and Notices of Violation; [30 CFR 843.11(d)];

• Rules 5.05, 5.05.1, .2, .3, .4, .4(1), .4(2), .4(2)(a), .4(2)(b), 5.05.5, and 5.05.5(1) through (4); Individual Civil Penalties; [30 CFR 846];

• Rules 5.06 and 5.06.1; Alternative Enforcement: Scope; [30 CFR 847.1];

• Rules 5.06.2 and .2(1) through (3); Alternative Enforcement: General Provisions; [30 CFR 847.2];

• Rules 5.06.3, .3(1), .3(2), .3(2)(a) and (b), and .3(3); Alternative Enforcement: Criminal Penalties; [30 CFR 847.11];

• Rules 5.06.4 and 5.06.4(2) through (4); Alternative Enforcement: Civil Actions for Relief; [30 CFR 847.16(b) and (c)];

• Rule 6.01.3(3); Duties of Blasters and Operators; [30 CFR 850.15(e)(1)];

• Rule 7.06.2(1); Petition Requirements: Designation; [30 CFR 764.13(b)(1)(i)]; and

• Rule 7.06.3(1); Petition Requirements: Termination; [30 CFR 764.13(c)(1)(i)].

1. Rule 1.04(20.1); Definitions, ''Certified Blaster''; [30 CFR 850.15]

Proposed Rule 1.04(20.1), the revised definition of ''certified blaster,'' is consistent with the definition and requirements for a ''blaster'' at 30 CFR 850.5. However, the reference to Rule 2.05.3(6) should be a reference to Rule 2.05.3(6)(a) to properly identify the specific requirements (*i.e.,* the blasting plan) with which a certified blaster must be familiar. With this change, we approve the amendment.

Colorado's definition of ''certified blaster'' is consistent with the definition and requirements for a ''blaster'' under the Federal regulations. Even though the proposed Colorado definition uses ''responsible for blasting operations'' instead of ''responsible for the use of explosives,'' which is used in the Federal definition, the terms are essentially interchangeable, particularly because the Colorado definition also requires certified blasters to be familiar with the requirements of Rule 4.08, *Use of Explosives.* Rule 4.08 specifies the requirements for the use of explosives, and Rule 6 specifies requirements for the training, examination and certification of blasters, both of which are appropriate references to rules with which a certified blaster must be familiar. The proposed definition is no less effective than the Federal regulations in satisfying the requirements of SMCRA and we approve the proposed change to Rule 1.04(20.1).

2. Rule 1.04(39.1); Definitions, ''Drinking, Domestic or Residential Water Supply''; [30 CFR 701.5]

Colorado was informed of the requirement to define this term in 732 letters that we sent the State on June 5, 1996, and April 4, 2008. Proposed Rule 1.04(39.1) is substantively identical to the Federal regulation at 30 CFR 701.5, *Drinking, domestic or residential water supply,* except the Colorado rule adds the stipulation that ''the user and/or owner has secured water rights or allocations recognized by state law'' for the water. Colorado expanded upon the Federal definition to clarify that the user and/or owner of the delivered water has secured water rights or allocations received by State law. Because water rights are an important topic in the western United States, this clarification is necessary to ensure that the user has acquired the rights for the water that is being received from a well or spring or any appurtenant (something that is added but not essential) delivery system. The use of water and water rights are governed by the State under the Colorado Constitution and State law; thus, the stipulation is appropriate. It is also not inconsistent with the Federal regulations and is no less effective than the Federal regulations in satisfying the requirements of SMCRA. Therefore, we approve the amendment.

3. Rule 1.04(70.1); Definitions, ''Knowingly''; [30 CFR 701.5]

In response to Item A.3 of OSMRE's October 2, 2009, 732 letter, Colorado proposed to amend its existing definition of ''Knowingly'' at Rule 1.04(70.1) by adding the phrase ''Knowing or''. By letter dated May 20, 2013, OSMRE found that the proposed revision to the definition of ''Knowing'' or ''Knowingly'' was less effective than the Federal regulations in satisfying the requirements of SMCRA because the scope of the Colorado proposed definition was limited to the assessment of individual civil penalties against persons acting on behalf of corporate permittees (*i.e.,* Rule 5.04.7, *Individual Penalties*), whereas the Federal definition applies to the assessment of civil and criminal penalties against all persons, including non-corporate operators and permittees. Consequently, OSMRE required Colorado to revise the definition so that it applies to the civil and criminal penalties provisions of both the Colorado Surface Coal Mining Reclamation Act and the Colorado Rules. OSMRE also required that the definition be applicable to any person, including individual operators as well as persons authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee.

In response to our concern, Colorado now proposes language to include the assessment of individual criminal penalties against persons acting on behalf of corporate permittees. Additionally, Colorado proposes language that applies the definition to any person, including individual operators as well as persons authorizing, ordering or carrying out an act or omission on the part of a corporate permittee. Colorado's proposed revisions make Rule 1.04(70.1) consistent with and no less effective than the Federal regulations at 30 CFR 701.5; therefore, we approve the amendment.

4. Rule 1.04(71)(c); Definitions, ''Rangeland''; [30 CFR 701.5]

Colorado proposed a new land use category, ''grazingland,'' which essentially replaces the current land use category, ''rangeland'' (*i.e.,* the land use currently defined by the term, ''rangeland,'' is proposed to be defined by the term, ''grazingland,'' and the

''rangeland'' land use is being redefined to be a combination of the ''grazingland'' and ''fish and wildlife habitat'' land uses). Colorado's definition of ''rangeland'' simply establishes a land use for lands that are used for both livestock grazing (*i.e.,* ''grazingland'') and for the production, protection, or management of fish and wildlife species (*i.e.,* ''fish and wildlife habitat''). Proposed Rule 1.04(71)(k) creates a new land use category, ''grazingland,'' which Colorado defines as ''lands where plant cover, dominated by adapted wildland species, is principally valuable for livestock forage, and management is primarily achieved by regulating the intensity of grazing and season of use,'' and which is essentially the same as the Federal definition of ''grazingland.'' Rule 1.04(71)(h) defines ''fish and wildlife habitat'' to mean ''land used wholly or partially in the production, protection or management of species of fish or wildlife.''

Elsewhere in the approved Colorado rules and the Colorado rules proposed for revision in this amendment, requirements applicable to the ''rangeland'' land use are specified. Proposed Rule 4.15.7(5) establishes the parameters for determining revegetation success of ''rangeland'' as cover, diversity, herbaceous production, and woody plant reestablishment and the liability period for determining revegetation success, and proposed Rule 4.15.7(5)(g) establishes that interseeding ''rangeland'' is a normal husbandry practice. Proposed Rules 4.15.8(2)(d), 4.15.8(5), and 4.15.8(8) establish applicable success criteria for ''rangeland.'' Proposed Rule 4.16.3(6) specifies requirements for changing the ''rangeland'' land use to a ''cropland'' land use.

Colorado's proposed revision of the definition of the land use category ''rangeland'' is no less effective than the Federal regulations in satisfying the requirements of SMCRA; therefore, we approve the proposed amendment.

5. Rule 1.04(71)(k); Definitions, ''Grazingland''; [30 CFR 701.5]

Colorado's proposed definition of ''grazingland'' is essentially modeled after the Federal definition of ''rangeland,'' which is synonymous with the Federal definition of ''grazingland.'' The Federal regulation at 30 CFR 701.5 defines rangeland as land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

The Federal definition of ''grazingland'' is land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

Under the Federal regulations, ''grazingland'' and ''rangeland'' are essentially the same; both are lands where the ''indigenous vegetation'' (*i.e.,* ''native grasses, forbs, and shrubs'') is used for grazing.

In Colorado's proposed definition of ''grazingland,'' the term ''adapted wildland species . . . principally valuable for livestock forage'' is substantively the same as the Federal terms ''native grasses, forbs, and shrubs valuable for forage,'' which is used in the Federal definition of ''rangeland'' and ''indigenous vegetation . . . managed for grazing [and] browsing,'' which is used in the Federal definition of ''grazingland.''

Elsewhere in Colorado's current and proposed rules, requirements applicable to the ''grazingland'' land use are specified. The ''grazingland'' land use combined with the ''fish and wildlife habitat'' land use comprise the ''rangeland'' land use in proposed Rule 1.04(71)(c), the revised definition of ''rangeland.'' Proposed Rule 4.15.7(5) establishes the parameters for determining revegetation success of ''grazingland'' as cover, diversity, and herbaceous production and the liability period for determining revegetation success, and proposed Rule 4.15.7(5)(g) establishes that interseeding ''grazingland'' is a normal husbandry practice. Proposed Rules 4.15.8(2)(a) and 4.15.8(5) establish applicable success criteria for ''grazingland.'' Proposed Rule 4.16.3(6) specifies requirements for changing the ''grazingland'' land use to a ''cropland'' land use.

Based on the analysis above, we find Colorado's proposed definition of the new land use category, ''grazingland,'' is no less effective than the Federal regulations in satisfying the requirements of SMCRA; therefore, we approve the proposed amendment.

6. Rule 1.04(71.2); Definitions, ''Material Subsidence Damage''; [30 CFR 701.5]

Colorado was notified of its requirement to define this term in 732 letters that we sent the State on June 5, 1996, and April 4, 2008. Colorado proposes to add a new definition for ''material subsidence damage'' in the context of Rules 2.05.6 and 4.20, pertaining to subsidence. The proposed definition is substantively identical to the Federal definition of ''material damage'' at 30 CFR 701.5. This proposed definition is no less effective than the Federal regulations in satisfying the requirements of SMCRA; therefore, we approve the amendment.

7. Rule 1.04(81); Definitions, ''Other Minerals''; [30 CFR 702.5(e)]

Colorado is proposing to remove the definition of ''other minerals'' from their rules. The term ''other minerals'' does not appear anywhere else in the Colorado rules. This definition was previously required when Colorado's rules allowed an exemption from the requirements of the rules for the extraction of coal incidental to the extraction of other minerals. The 1992 revision of Colorado's Coal Act removed this exemption. Because this term does not appear anywhere else in the Colorado rules, it is not necessary for Colorado to define this term, and we approve the proposed deletion of the definition for ''other minerals''.

8. Rule 1.04(132)(c); Definitions, Surface Coal Mining Operations; [30 CFR 761.200]

Proposed Rule 1.04(132)(c), the proposed revision to the definition of ''surface coal mining operations,'' is consistent with the definition of ''surface coal mining operations'' at 30 CFR 700.5, as interpreted at 30 CFR 761.200, *Interpretative rule related to subsidence due to underground coal mining in areas designated by Act of Congress.* Colorado added this proposed language to clarify that subsidence due to underground coal mining is not included in the definition of ''surface coal mining operations''. The proposed rule is in accordance with the Federal regulations in satisfying the requirements of SMCRA, and we approve the amendment.

9. Rule 1.04(149); Definitions, ''Valid Existing Rights''; [30 CFR 761.5 and 761.11]

On April 11, 2011, Colorado proposed to revise its definition of ''valid existing rights'' at Rule 1.04(149) in response to Item B.1 of OSMRE's April 2, 2001, 732 letter. On January 15, 2008, in *National Mining Association* v. *Kempthorne,* 512 F.3d 702 (D.C. Cir.), the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision to uphold the VER and associated rules that OSMRE published on December 17, 1999 (64 FR 70766). Because the VER and associated rules were challenged in Federal court on several fronts, OSMRE informed Colorado that the State could defer

responding to our April 2, 2001, letter pending the outcome of the litigation.

By letter dated May 20, 2013, OSMRE found that the proposed revision to the definition of ''valid existing rights'' less effective than the Federal regulations in satisfying the requirements of SMCRA because Colorado failed to include language for the protection of prohibited lands required by SMCRA section 522(e) (30 U.S.C. 1272(e)). Because Colorado did not include a reference to 30 U.S.C. 1272(e), there was no language in Colorado's rules protecting those lands between August 3, 1977 (when SMCRA was enacted and the lands became protected) and August 30, 1980 (when Rule 2.07.6(2)(d) became effective), thus making Colorado's Rules less effective than the Federal regulations. As a result, we required Colorado to include the aforementioned reference in its proposed rule language.

In response, Colorado now proposes to include language in its rules for the protection of prohibited lands as required by SMCRA section 522(e) (30 U.S.C. 1272(e)). Colorado's proposed revisions make Rule 1.04(149) consistent with and no less effective than the Federal regulations at 30 CFR 761.5 and 761.11, respectively. Accordingly, we approve the amendment.

10. Rules 1.04(149)(a)(ii)(B) and (B)(I) Through (IV); Definitions, Valid Existing Rights, ''Needed for and Adjacent to'' Standard; [30 CFR 761.5(b)(2)]

In response to Item B.2 of OSMRE's April 2, 2001, 732 letter, Colorado proposed to revise its definition of ''valid existing rights'' by incorporating the ''Needed for and adjacent to'' standard at Rules 1.04(149)(a)(ii)(B) and (B)(I) through (B)(IV). Colorado's proposed revised definition of ''valid existing rights'' at Rule 1.04(149)(a)(ii)(B), which incorporates the ''Needed for and adjacent to'' standard, is consistent with the definition and requirements for the ''Needed for and adjacent standard'' of ''valid existing rights'' at 30 CFR 761.5. Colorado's proposed rule is more restrictive than the Federal regulations in that the ''Needed for and adjacent to'' standard applies only to surface coal mining operations that are ''on-going,'' meaning that (1) the permit did not terminate pursuant to Colorado Revised Statutes (C.R.S.) 33–34–109(6), (2) surface coal mining operations must have commenced, (3) the permit to conduct surface coal mining operations has not expired for failure to renew in accordance with Rule 2.08.05, and (4) the performance bond has not been fully released or forfeited in accordance with Rules 3.03 and 3.04. Under the Federal regulation, the standard applies to surface coal mining operations for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made. Thus, the standard applies to operations that may not have commenced, as well as ''on-going'' operations.

However, by letter dated May 20, 2013, OSMRE found at Item No. 3 that subsections (B)(I)–(IV) of Colorado's proposed revision to the definition of ''valid existing rights'' was less effective than the Federal regulations in satisfying the requirements of SMCRA because Colorado failed to include language for the protection of prohibited lands required by SMCRA section 522(e) (30 U.S.C. 1272(e)). Colorado's failure to include a reference to 30 U.S.C. 1272(e) meant that there was no language in Colorado's rules protecting those lands between August 3, 1977 (when SMCRA was enacted and the lands became protected) and August 30, 1980 (when Rule 2.07.6(2)(d) became effective), thus making Colorado's rules less effective than the Federal regulations. As a result, we required Colorado to include the aforementioned reference in its proposed rule language.

In response, Colorado now proposes to include language for the protection of prohibited lands as required by SMCRA Section 522(e) (30 U.S.C. 1272(e)). Colorado's proposed revisions make Rules 1.04(149)(a)(ii)(B) and (B)(I) through (B)(IV) consistent with and no less effective than the Federal regulations at 30 CFR 761.5(b)(2). Accordingly, we approve the amendment.

11. Rule 1.04(149)(b) and (b)(i) Through (iii); Definitions, Valid Existing Rights, ''Existing Right of Way or Easement for a Road'' Standard; [30 CFR 761.5(c)(2)]

In response to Item B.3 of OSMRE's April 2, 2001, 732 letter, Colorado proposed to revise its definition of ''valid existing rights'' at Rules 1.04(149)(b) and (b)(i) through (iii) by incorporating the ''existing right of way or easement for a road'' standard. Colorado's proposed language is substantively identical to the corresponding Federal standards at 30 CFR 761.5(c)(1) and (2) with one exception.

Specifically, Colorado's revised rule language at Rule 1.04(149)(b)(i) includes the phrase ''a permit for a road'' in addition to a ''properly recorded right of way or easement'' as a type of recorded document that could grant a person a legal right to use or construct a road across the right of way or easement [or permit area] for surface coal mining operations. A properly recorded permit granting such legal rights is the equivalent of a ''right of way'' and/or ''easement.'' Therefore, the inclusion of ''a permit for a road'' does not render Colorado's proposed rule change less effective than the counterpart Federal regulations in satisfying the requirements of SMCRA.

However, by letter dated May 20, 2013, OSMRE found that Colorado's proposed revisions to its definition of ''valid existing rights'', at Rules 1.04(149)(b) and (b)(i) through (iii), about existing right of way or easements for a road, were less effective than the Federal regulations in satisfying the requirements of SMCRA because Colorado failed to include language for the protection of prohibited lands required by SMCRA section 522(e) (30 U.S.C. 1272(e)). Specifically, because Colorado did not include a reference to 30 U.S.C. 1272(e), there was no language in its rules protecting those lands between August 3, 1977 (when SMCRA was enacted and the lands became protected) and August 30, 1980 (when Rule 2.07.6(2)(d) became effective). As a result, we required Colorado to include the aforementioned statutory reference in its proposed rule language.

In response to our concern, Colorado now proposes to include language for the protection of prohibited lands required by SMCRA section 522(e) (30 U.S.C. 1272(e)). Colorado's proposed revisions make Rules 1.04(149)(b) and (b)(i) through (iii) consistent with and no less effective than the Federal regulations at 30 CFR 761.5(c)(2). Accordingly, we approve the amendment.

12. Rules 1.04(149.2), (149.2)(a), and (149.2)(b); Definitions, ''Violation, Failure or Refusal''; [30 CFR 701.5]

Proposed Rules 1.04(149.2), (149.2)(a), and (149.2)(b), the definition of ''violation, failure, or refusal,'' is substantively identical to the Federal definition at 30 CFR 701.5, *Violation, failure, or refusal.* Proposed Rule 5.05, *Individual Civil Penalties,* which replaces currently approved Rule 5.04.7, addresses the assessment of individual civil penalties. The term ''violation, failure, or refusal'' is used in the Federal regulations only in the context of assessment of individual civil penalties, specifically in 30 CFR 846.12(a), which specifies that individual civil penalties may be assessed against a corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a

violation, failure or refusal, and § 846.14(a)(1) and (2) and (b), which contain the requirements for determining the amount of an individual civil penalty. Thus, proposed Rule 5.05 is appropriately referenced. Section 123 of the Colorado Act, *Enforcement—civil and criminal penalties,* (C.R.S. 33–34–123) is the State program counterpart of section 518 of SMCRA, thus it is appropriately referenced. The proposed definition for ''violation, failure or refusal'' is no less effective than the Federal regulations in satisfying the requirements of SMCRA. We, therefore, approve the amendment.

13. Rule 1.07(1)(a)(v); Procedures for Valid Existing Rights Determinations—Property Rights Demonstration; [30 CFR 761.16(b)(1)(v)]

In response to Item G.2 of OSMRE's April 2, 2001, 732 letter, Colorado proposed revisions to Rule 1.07.1(a)(v), regarding what a property rights demonstration must include. On January 15, 2008, in *National Mining Association* v. *Kempthorne,* 512 F.3d 702 (D.C. Cir.), the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision to uphold the VER and associated rules that OSMRE published on December 17, 1999 (64 FR 70766). Because the VER and associated rules were challenged in Federal court on several fronts, we informed Colorado that the State could defer responding to our April 2, 2001, letter pending the outcome of the litigation.

By letter dated May 20, 2013, OSMRE notified the Division that Colorado's proposed revision to Rule 1.07(1)(a)(v) regarding the requirements for making a VER ''property rights'' demonstration was inconsistent with the counterpart Federal requirement at 30 CFR 761.16(b)(1)(v). Specifically, Colorado's proposed rule language did not require that property rights demonstrations include an explanation of how surface coal mining operations that an applicant claims the right to conduct would be consistent with State property law.

Colorado now proposes to revise Rule 1.07(1)(a)(v) by adding language requiring that a property rights demonstration must include an explanation of how surface coal mining operations would be consistent with State property law. Colorado's proposed revision makes Rule 1.07(1)(a)(v) consistent with and no less effective than the Federal counterpart regulation at 30 CFR 761.16(b)(1)(v). Accordingly, we approve the amendment.

14. Rule 1.07(3)(a); Procedures for Valid Existing Rights Determinations, Notice and Comment Requirements and Procedures; [30 CFR 761.16(d)]

In response to Item G.2 of OSMRE's April 2, 2001, 732 letter, Colorado proposed to revise Rule 1.07(3)(a) to provide for public participation in the VER determination process and ensure notification of affected parties in accordance with the Federal regulations at 30 CFR 761.16(d).

By letter dated May 20, 2013, OSMRE found that Colorado's proposed revision to Rule 1.07(3)(a) regarding notice and comment requirements and procedures for VER determinations incorrectly referenced Rule 1.04(149)(2).

In response to our concern, Colorado now proposes to reference the correct citation at Rule 1.07(2) regarding initial review of a VER request. Colorado's proposed rule change makes Rule 1.07(3)(a) consistent with and no less effective than the Federal regulations at 30 CFR 761.16(d). Accordingly, we approve the amendment.

15. Rules 1.07(4)(e), (e)(i), and (e)(ii); Procedures for Valid Existing Rights Determinations, How a Decision Will Be Made; [30 CFR 761.16(e)(5)(i) and (ii)]

In response to Item G.1 of OSMRE's April 2, 2001, 732 letter, Colorado proposed to revise its rules at 1.07(4)(e), (e)(i), and (e)(ii) to be consistent with and no less effective than the Federal regulations at 30 CFR 761.16(e)(5)(i) and (ii) regarding procedures for making VER determinations. Colorado's proposed rules elect to omit an alternate provision that allows the agency responsible for making a VER determination to require that the person requesting the determination publish the notice and provide a copy of the published notice to the agency. Because the Federal regulations offer alternatives for publishing notice of VER determinations, Colorado's omission of this language does not render its proposed rules less effective than the counterpart Federal regulations.

However, by letter dated May 20, 2013, OSMRE found that Colorado's proposed revisions to Rules 1.07(4)(e), (e)(i), and (e)(ii) were less effective than the Federal regulations in satisfying the requirements of SMCRA because Colorado failed to include language for the protection of prohibited lands required by SMCRA section 522(e) (30 U.S.C. 1272(e)). Specifically, because Colorado did not include a reference to 30 U.S.C. 1272(e), there was no language in its rules protecting those lands between August 3, 1977 (when SMCRA was enacted and the lands became protected) and August 30, 1980 (when Rule 2.07.6(2)(d) became effective). As a result, we required Colorado to include the aforementioned statutory reference in its proposed rule language.

In response to our concern, Colorado now proposes to include language for the protection of prohibited lands required by SMCRA section 522(e) (30 U.S.C. 1272(e)). Colorado's proposed revisions make Rules 1.07(4)(e), (e)(i), and (e)(ii) consistent with and no less effective than the Federal counterpart regulations at 30 CFR 761.16(e)(5)(i) and (ii). Accordingly, we approve the amendment.

16. Rule 1.07(5); Procedures for Valid Existing Rights Determinations, Administrative and Judicial Review; [30 CFR 761.16(f)]

In response to Item G.1 of OSMRE's April 2, 2001, 732 letter regarding administrative and judicial review of VER determinations, Colorado proposed to add language to Rule 1.07(5) stating that a determination about whether the applicant does or does not have valid existing rights is subject to Board review under Rule 1.11. By letter dated May 20, 2013, OSMRE notified Colorado that its reference to Rule 1.11 was incorrect. Specifically, because Colorado is proposing to recodify its rules, the correct rule reference regarding Board review is now found at Rule 1.12, *Requests to the Board.* In response to our concern, Colorado now proposes to reference newly renumbered Rule 1.12. Colorado's proposed revision makes Rule 1.07(5) consistent with and no less effective than the Federal regulations at 30 CFR 761.16(f) and we approve the amendment.

17. Rule 2.02.3; General Requirements: Exploration Involving Removal of More Than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations; [30 CFR 772.12(a)]

Colorado proposes language that changes the title of Rule 2.02.3 to indicate that the rules at 2.02.3 apply not only to exploration involving the removal of more than 250 tons of coal outside an approved permit area, but also to exploration occurring on lands designated as unsuitable for surface coal mining. The addition of the proposed language is substantively identical to the Federal counterpart regulation at 30 CFR 772.12(a). Additionally, Colorado proposes language that specifies that Rule 2.07.6(2)(d) is used to designate lands as unsuitable for all or certain types of surface coal mining operations. The proposed language is no less effective than the Federal counterpart

regulation; therefore, we approve the amendment.

18. Rules 2.03.4(3), (3)(a)(ii), and (3)(b); Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Legal, Financial, Compliance and Related Information; [30 CFR 778.12]

In response to Item K.3 of OSMRE's October 2, 2009, 732 letter, Colorado proposed to revise Rules 2.03.4(3) through (3)(a)(iv) that require each application for a surface coal mining permit to contain a complete identification of interests, including permit history information required under 30 CFR 778.12(a), (b), and (c), respectively.

By letter dated May 20, 2013, we found that Colorado's proposed rule language in subsection (3) warranted the inclusion of additional clarifying language to be consistent with and no less effective than the Federal counterpart regulation at 30 CFR 778.12(a). Specifically, we required Colorado to revise its proposed rule to read, ''A list of all names under which the applicant, operator, and partners or principle shareholders of the applicant or operator operate or previously operated . . .'' Colorado's failure to include this additional language in the proposed rule change rendered its program less effective than the Federal regulations at 30 CFR 778.12(a), and failed to satisfy the requirements specified in Item K.3 of OSMRE's October 2, 2009, 732 letter.

In addition, proposed Rule 2.03.4(3)(a)(ii) was merely intended to be recodified. Upon further review, we found this rule to be less effective than the Federal counterpart regulation at 30 CFR 778.12(c)(5) because it failed to require that the application include ''the person's ownership or control relationship to the operation . . .'' Existing Rule 2.03.4(3)(a)(ii) required the application to contain the person's ownership or control relationship to the applicant.

Lastly, Colorado proposed to revise recodified subsection (3)(b) by replacing the word ''person'' with the phrase ''applicant or operator'' which is consistent with the terminology used in the Federal regulation at 30 CFR 778.12(b). However, subsection (3)(b) did not include counterpart language to the last sentence in 778.12(b), which requires the identification of each application by its application number and jurisdiction, or by other identifying information when necessary. Item K.3 of OSMRE's October 2, 2009, 732 letter indicated that Colorado does not have a counterpart to this provision in its rules. As a result, Colorado's failure to include this additional requirement in the proposed rule change rendered its program less effective than the Federal regulations at 30 CFR 778.12(b), and failed to satisfy the requirements specified in Item K.3 of OSMRE's October 2, 2009, 732 letter.

In response to OSMRE's concerns, Colorado now proposes to add language at Rule 2.03.4(3) stating that a list of all names that the applicant, operator, and partners or principal shareholders of the applicant or operator operate or previously operated must be included in the submission of the application. In addition, Colorado proposes language at Rule 2.03.4(3)(a)(ii) that requires an application to include information regarding a person's ownership or control relationship to the operation instead of the applicant. Lastly, Colorado proposes language at Rule 2.03.4(3)(b) requiring the applicant to provide jurisdiction information for both the applicant and the operator.

Based on the discussion above, we find that Colorado's proposed revisions to Rules 2.03.4(3), (3)(a)(ii), and (3)(b) are consistent with and no less effective than the corresponding Federal regulations at 30 CFR 778.12(a), (b), and (c)(1) through (5). Accordingly, we approve the amendment. Specifically, Rules 2.03.4(3)(a), (3)(a)(i), (3)(a)(iii), and (3)(a)(iv) are approved under Part B. of this document.

19. Rules 2.03.4(4), .4(4)(a) Through (c), .4(6)(b), and .4(8); Identification of Interests; [30 CFR 778.11 and 778.13]

Colorado proposes revisions to Rules 2.03.4(4), (6)(b), and (8) that require each application for a surface coal mining permit to contain a complete identification of interests, including permit and operator information, as well as property interest information required under 30 CFR 778.11 and 778.13, respectively.

In its Statement of Basis, Purpose, and Specific Statutory Authority, Colorado explains that Rule 2.03.4(4) is amended for clarity and to be consistent with 30 CFR 778.11(c) by requiring a list of the entities within an applicant's or operator's organizational structure for which identifying information is required. Colorado's proposed rule change includes counterpart language that is consistent with and no less effective than the Federal regulations at 30 CFR 778.11(c)(1) through (6) regarding applicant and operator information. Accordingly, we approve it.

Proposed Rule 2.03.4(4)(a) is revised to be consistent with 30 CFR 778.11(d)(1), which requires the application to include the telephone number of entities being named as owners or controllers. Colorado's proposed rule change is consistent with and no less effective than the Federal regulations at 30 CFR 778.11(d)(1) and we are approving it.

Next, Colorado proposes to add new Rule 2.03.4(4)(c) to be consistent with 30 CFR 778.11(d)(3) and require that the date an owner or controller began functioning in their position be included in the application. Colorado's newly proposed rule is substantively identical to the Federal counterpart provision at 30 CFR 778.11(d)(3) and we approve it.

Colorado proposes to amend Rule 2.03.4(6)(b) for purposes of clarity and require that each permit application contain the names and addresses of ''any holders of record of any leasehold interest in the coal to be mined.'' Colorado's proposed rule change is substantively identical to the Federal counterpart language at 30 CFR 778.13(a)(2) and we approve it.

Lastly, Colorado proposes to revise Rule 2.03.4(8) to be consistent with 30 CFR 778.13(d) by clarifying that Mine Safety and Health Administration (MSHA) identification numbers must be provided for the operation itself and any structures that require approval by MSHA. Colorado's proposed rule change is substantively identical to the Federal counterpart language at 30 CFR 778.13(d) and we approve the amendment.

20. Rule 2.04.12(2)(g); Application for Permit for Surface or Underground Mining Activities—Minimum Requirements for Information on Environmental Resources—Prime Farmland Investigation; [30 CFR 785.17(d)]

Colorado is proposing to revise Rule 2.04.12(2)(g) to clarify that the State Conservationist of the Natural Resources Conservation Service (NRCS) is delegated the responsibility by the Secretary of Agriculture to demonstrate that land is not prime farmland. Proposed Rule 2.04.12(2)(g) is substantively identical to the Federal counterpart regulation at 30 CFR 785.17(d), which states that the Secretary of Agriculture, the head of the United States Department of Agriculture (USDA), assigns prime farmland responsibilities arising under the Act to the Chief of the U.S. Soil Conservation Service, which is currently known as the Natural Resources Conservation Service (NRCS), and that the NRCS shall carry out consultation and review through the State Conservationist located in each State. We find that

proposed Rule 2.04.12(2)(g) is no less effective than the Federal regulation at 30 CFR 785.17(d); therefore, we approve the amendment.

21. Rule 2.05.6(6); Operation and Reclamation Plan—Mitigation of the Impacts of Mining Operations—Subsidence Survey, Subsidence Monitoring, and Subsidence Control Plan; [30 CFR 784.20]

In response to OSMRE's June 5, 1996, and April 4, 2008, letters, Colorado proposed revisions to Rule 2.05.6(6) addressing mitigation of the impacts of mining operations with subsidence surveys, subsidence monitoring, and subsidence control plans. All proposed changes at Rule 2.05.6(6) are approved, even if they are not listed individually in finding number 21. By letter dated May 20, 2013, OSMRE notified the Division that Colorado's proposed revisions to Rule 2.05.6(6) regarding the mitigation of the impacts of mining operations was less effective than the counterpart Federal regulations at 30 CFR 784.20. Specifically, Colorado's rules did not contain a requirement for an applicant/permittee to notify an owner of a protected structure, who refuses access for a pre-subsidence survey, that it will not be presumed that subsidence damaged the structure if damage occurs after mining. Colorado now proposes language at proposed Rule 2.05.6(6)(a)(ii)(A) that if the landowner will not allow the applicant access to the site to conduct a pre-subsidence survey, the applicant will notify the owner, in writing, of the effect that denial of access will have in establishing the pre-subsidence condition to determine whether any subsequent damage to protected structures was caused by subsidence from underground mining under existing Rule 4.20.3(2). We, therefore, approve the amendment.

Also in our May 20, 2013 letter, OSMRE found that Colorado's proposed revisions to Rule 2.05.6 did not require that an applicant/permittee must provide copies of pre-subsidence surveys, technical assessments or engineering evaluations to the Division. In response to OSMRE's disapproval, Colorado now proposes an additional revision to Rule 2.05.6(6)(a)(iv) requiring the applicant to provide copies of pre-subsidence surveys, technical assessments, and engineering evaluations to the Division. OSMRE approves this amendment.

Numerous paragraphs within proposed Rule 2.05.6(6) referred to maps ''prepared according to the standards of Rule 2.10'' (*i.e.,* Rules 2.05.6(6)(a)(ii)(B), 2.05.6(6)(c)(ii), 2.05.6(6)(e)(i)(F), and 2.05.6(6)(f)(vi)), which requires maps at ''a scale of 1:24,000 or larger if requested by the Division for good cause shown or desired by the operator.'' This provision is inconsistent with the Federal requirement at 30 CFR 784.20(a)(1) that requires a map ''at a scale of 1:12,000, or larger if determined necessary by the regulatory authority.'' In response to Item No. 12 of our May 20, 2013, letter, Colorado now proposes language at Rules 2.05.6(6)(a)(ii)(B), 2.05.6(6)(c)(ii), 2.05.6(6)(e)(i)(F), and 2.05.6(6)(f)(vi) requiring that maps must be at a scale of 1:12,000 or larger if determined necessary by the Division. We, therefore, approve the amendment to the aforementioned rules.

We are approving the remaining requirements of the Federal regulations at § 784.20, which are contained in the following sections of Colorado Rule 2.05.6(6):

30 CFR 784.20 paragraph	Rule 2.05.6(6) section
(a)(1)	(a)(ii)(B).
(a)(2)	(b) and (b)(i).
(a)(3) first sentence	(a)(ii)(A).
(a)(3) second sentence	Missing—see below.
(a)(3) third sentence	(a)(iii).
(a)(3) fourth sentence	(a)(iv).
(a)(3) fifth sentence	Missing, but no less effective; the Federal rule requiring a survey to determine the condition of protected structures within areas encompassed by the angle of draw is suspended; the Colorado Rule is not.
(b) first sentence, 1st clause	(a)(i).
(b) first sentence, 2nd clause	(b)(ii); however, Colorado's Rule requires a monitoring plan; the Federal regulation requires no further information.
(b)(1)	(f)(ii)(A) and (f)(iii)(A).
(b)(2)	(f)(vi).
(b)(3)	(f)(i).
(b)(4)	(c) and (f)(iii)(C)(V).
(b)(5)(i)–(iii)	(f)(iii)(B).
(b)(5)(iv)	(f)(iii)(C)(I)–(IV).
(b)(6)	(e) and (f)(v).
(b)(7) 1st clause	(f)(iii).
(b)(7) 2nd clause	Rule 4.20.3(1).
(b)(8)	(f)(iv).
(b)(9)—other requirements of RA	(b)(iii)(A) and (B) requires a detailed state-of-the-art analysis of subsidence effects; (d)(i) requires the permittee and the Division to monitor and verify semi-annually, the accuracy of the subsidence predictions; (d)(ii) allows the Division to suspend underground mining near protected structures or renewable resource lands if imminent danger of material damage or diminution of use is determined to exist; (f)(vi)(B) requires a description (in addition to the map) of the location and extent of areas of planned subsidence; and (f)(vii) requires a schedule for submitting periodically, a detailed plan of actual underground mining, which is substantively identical to the requirements of 30 CFR 817.121(g). (e)(i)(F)(III) sets the ''default'' angle of draw at 45°; 30 CFR 817.121(c)(4)(i) sets it at 30°.

22. Rules 2.07.3(2) and (3); Public Participation and Approval of Permit Applications—Government Agency and Public Comments on Permit Applications; [30 CFR 773.6]

Rule 2.07.3 contains the public participation requirements of the Colorado program. Colorado proposes to delete language at Rule 2.07.3(2) that is redundant of the requirements of Rules 2.07.3(2)(b), which explains the requirements for the description or map contained in the public notice, and add Rule 2.07.3(2)(h), which requires the application for a permit revision or technical revision to include a written description of the proposed revision and a map or description identifying the lands subject to the revision in the notice. Because the deleted requirements are addressed at Rules 2.07.3(2)(b) and (h), we approve the amendment.

At Rule 2.07.3(3)(a), Colorado proposes to remove ''technical revision'' from the list of items for which the Division must issue a written notice when it has received a complete application. This proposed deletion is appropriate, since the requirements for agency notices of technical revisions is moved to Rule 2.08.4(6)(b)(i), *Revisions to a Permit,* which is approved under Part III.B. of this document. The proposed changes to Rules 2.07.3(2) and (3) are no less effective than the Federal regulations at 30 CFR 773.6; therefore, we approve the amendment.

23. Rules 2.07.4(2)(e) Through (e)(ii); Division and Board Procedures for Review of Permit Applications: Deadline for Submitting a Performance Bond After Permit Approval; [30 CFR 740.13(c)(9), 773.16, 773.19(a)(1), and 800.11(a)]

Proposed Rules 2.07.4(2)(e) through (2)(e)(ii) would revise requirements for an applicant to file a bond after permit approval, for information the Division may request to update or revise an application, and for actions the Division will take if an applicant does not respond to its request for information. Rule 2.07.4(2)(e) would require an applicant to file a performance bond anytime within three years after the Division finally approves its permit. That revision also requires the Division to review the terms of its original permit approval if the applicant does not file a bond within that period. At that time, the Division may reaffirm its original approval or request updated and/or additional information. Rule 2.07.4(2)(e)(i) would subject the Division's request for information to the notification and review requirements of Rule 2.07. Under Rule 2.07.4(2)(e)(ii), the Division may reissue a decision to deny the application if the applicant does not submit a bond within 90 days of the information request. In that case, the Division must provide notice under Rules 2.07.4(2)(c) and (d) and persons may submit objections to its decision under Rule 2.07.4(3).

Colorado explained that it proposes these revisions to Rules 2.07.4(2)(e) through (2)(e)(ii) to ensure that the written findings it made when it originally approved a permit will be relevant at the time an applicant files a bond. The State noted that, as currently approved, Rule 2.07.4(2)(e) allows an applicant to wait an indefinite time after permit approval to file a bond, after which the Division would automatically issue the previously approved permit. In that case, the State explained, it possibly could issue a permit after changes occurred in baseline site conditions, right of entry, ownership and control information, compliance history, relationships to areas designated unsuitable for mining, and other conditions. Further, the State would be unable to review the permit application to determine if revisions or modifications are needed because it does not have authority to periodically review an approved application or require changes if it has not yet issued a permit. Colorado noted that this is ''somewhat contrary'' to Section 34–33–109(6) of its Act, which requires a permit to terminate within three years after being issued if the permittee has not started mining.

The counterpart Federal regulations are found at 30 CFR 740.13(c)(9), 773.16, 773.19(a)(1), and 800.11(a). The regulations at 30 CFR 740.13(c)(9) introductory text, (c)(9)(i), and 800.11(a) require an applicant/permittee to file a performance bond after the approval of a permit application and before permit issuance, but do not impose a specific time limit for filing the bond. Under 30 CFR 773.16, the applicant is required to file the performance bond or other equivalent guarantee before permit issuance if the regulatory authority decides to approve the permit application. The applicant must file the bond under the provisions of subchapter J, which addresses bonding and insurance requirements for surface coal mining and reclamation operations.

Colorado's proposed rules impose requirements that neither the Federal counterpart regulations nor SMCRA impose(s). The State explained its proposed rule changes by saying ''[t]he board finds that this revision is necessary for the protection of public safety and the environment, consistent with Section 34–33–108 of its Act.''

The proposed revisions at Rules 2.07.4(2)(e), (e)(i), and (e)(ii) will better enable the Division to ensure that data it reviewed in support of its permit approval are relevant when it issues the permit after the applicant files the required performance bond, whenever that filing occurs. We find the proposed rules to be consistent with Colorado's Act, consistent with and no less effective than the Federal regulations, and in accordance with SMCRA; therefore, we approve the amendments.

24. Rules 2.07.6(1)(b) Through (b)(ii); Criteria for Review of Permit Applications for Permit Approval or Denial: Eligibility for a Permit; [30 CFR 773.12(a) Through (a)(2)]

In response to Item E.6 of OSMRE's October 2, 2009, 732 letter, Colorado proposed revisions to Rules 2.07.6(1)(b) through (b)(ii) regarding the Division's determination about whether an applicant is eligible for a permit. Proposed Rule 2.07.6(1)(b) stated that the Division will not issue a permit if any surface coal mining and reclamation operation directly owned or controlled by the applicant has an unabated or uncorrected violation, or if an operation indirectly controlled by the applicant or operator has an unabated or uncorrected violation and that control was established or the violation was cited after November 2, 1988.

By letter dated May 20, 2013, OSMRE notified the Division that a missing statutory reference was identified at proposed Rule 2.07.6(1)(b). Specifically, Colorado merely referenced Rules 2.07.6(2)(g) and (o). Although Colorado's referenced Rules 2.07.6(2)(g) and (o) include criteria for permit eligibility that referenced section 510(c) of SMCRA and counterpart 30 CFR 773.12, they do not include all of the provisions of section 510(c) of SMCRA. Consequently, Colorado's referenced provisions are more limiting and rendered proposed Rule 2.07.6(1)(b) less effective than the counterpart Federal statute.

To correct this deficiency, Colorado now proposes to add a reference to Section 34–33–114(3) of the Colorado Surface Coal Mining Reclamation Act, regarding which rules and laws the Division must reference when determining whether an applicant is eligible for a permit. Section 34–33–114(3) of the Colorado Act is substantively identical to section 510(c) of SMCRA, thus making Rules 2.07.6(1)(b)(i) through (ii) consistent with and no less effective than the counterpart Federal regulations at

§ 773.12(a) introductory text through (a)(2). Accordingly, we approve the amendment.

25. Rules 2.07.6(1)(c) Through (f); Criteria for Review of Permit Applications for Permit Approval or Denial—Review of Permit Applications; [30 CFR 773.12(b) Through (c)]

Colorado proposes revisions and additions to Rules 2.07.6(1)(c) through (1)(f) to be consistent with the changes we made to 30 CFR 773.12 concerning identification of interests, compliance information, and permit eligibility in the December 18, 2000, and December 3, 2007, **Federal Register** documents (65 FR 79663 and 72 FR 68029, respectively).

Colorado proposes to add Rule 2.07.6(1)(c) to prohibit the Division from issuing a permit to an applicant or operator that is permanently ineligible to receive a permit under proposed Rule 2.07.9(3). New Rule 2.07.6(1)(c) is substantively identical to and no less effective than the Federal regulation at 30 CFR 773.12(b). The State also proposes to recodify existing Rule 2.07.6(1)(c) as 2.07.6(1)(e) to accommodate new paragraphs (6)(1)(c) and (d) and to revise the reference to the hearing provisions of 2.07.4(3)(f) to 2.07.4(e)(g) to accommodate changes to that rule as well. We approve the amendment.

The State also proposes to add Rule 2.07.6(1)(d) to require the Division to notify an applicant in writing if it deems the applicant ineligible for a permit. That notification is to explain why the applicant is ineligible and include notice of the applicant's appeals rights. Rule 2.07.6(1)(c) is substantively identical to and no less effective than the Federal regulation at 30 CFR 773.12(d). Colorado's amendment proposes only two editorial changes to recodified Rule 2.07.6(1)(e), which has no counterpart in the Federal regulations. The State proposes to recodify it from subparagraph (c) to subparagraph (e) due to adding preceding new sections. It also proposes to change the reference to provisions for an adjudicatory hearing under Rule 2.07.4(3)(f) to subparagraph (3)(g) due to adding new subparagraph (f) in Rule 2.07.4(3). The State's rule is consistent with the Federal regulations and is in accordance with SMCRA, and we, therefore, approve the amendment.

Colorado proposes to recodify Rule 2.07.6(1)(d) as (f) and to revise it to prohibit the Division from issuing a permit after final approval until the applicant provides updated ownership, control, and compliance information or certifies that previously submitted information is current. Once the applicant fulfills that requirement, the Division must request another compliance history report from AVS no more than five days before issuing the permit. Colorado also proposes to remove wording from this subparagraph that required the Division to reconsider its decision to approve a permit in light of any new information that arises during the compliance review. We find that Proposed Rule 2.07.6(1)(f) is substantively identical to and no less effective than the Federal regulation at 30 CFR 773.12(c); therefore, we approve the amendment.

26. Rules 2.07.6(1)(g)(i), (g)(i)(A), (g)(i)(B), (g)(ii), (g)(ii)(A), (g)(ii)(B), (g)(ii)(C), (g)(ii)(C)(I), (g)(ii)(C)(II), (g)(ii)(D), (g)(iii), (g)(iii)(A), (g)(iii)(C), and (g)(iii)(D); Criteria for Review of Permit Applications for Permit Approval or Denial; [30 CFR 773.14]

Proposed Rule 2.07.6(1)(g) establishes procedures the Division must follow to find an applicant eligible for a provisionally issued permit and to find that a provisionally issued permit was improvidently issued.

Proposed Rules 2.07.6(1)(g)(i), (i)(A), and (i)(B) apply procedures for finding an applicant eligible for a provisionally issued permit. We find Rules 2.07.6(1)(g)(i), (i)(A), and (i)(B) are substantively identical to their Federal counterpart regulations at 30 CFR 773.14(a) introductory text, (a)(1), and (a)(2); therefore, we are approving them.

Colorado proposes to add Rule 2.07.6(1)(g)(ii), under which the Division will find an applicant eligible for a provisionally issued permit. We find that proposed Rules 2.07.6(1)(g)(ii), (g)(ii)(A), (B), (C), (C)(II), and (D) are substantively identical to the Federal counterpart regulations at 30 CFR 773.14(b) introductory text, (b)(1), (b)(2), (b)(3) introductory text, (b)(3)(ii), and (b)(4); therefore, we are approving them.

Proposed Rule 2.07.6(1)(g)(ii)(C)(I) refers to a good faith challenge to all pertinent ownership or control listings or findings ''. . . under Rules 2.11.1 through 2.11.4 . . .'' The Federal counterpart regulation found at 30 CFR 773.14(b)(3)(i) refers to a good faith challenge to all pertinent ownership or control listings or findings ''. . . under §§ 773.25 through 773.27 of this part . . .'' but does not refer to 30 CFR 773.28, which is the counterpart to referenced Rule 2.11.4. Rule 2.11.4 and 30 CFR 773.28 include provisions for written agency decisions on challenges to ownership or control listings or findings, including appeals of those written decisions. Reference to those appeals provisions is consistent with the scope of Rule 2.07.6(1)(g)(ii)(C)(I), which requires the Division to find an applicant eligible for a provisionally issued permit if that applicant demonstrates that it is pursuing a good faith challenge of all pertinent ownership or control listings or findings. We find Rule 2.07.6(1)(g)(ii)(C)(1) to be consistent with and no less effective than the counterpart Federal regulations; therefore, we approve the amendment.

27. Rule 2.07.6(1)(g)(iii)(B); Criteria for Review of Permit Applications for Permit Approval or Denial: Eligibility for a Provisionally Issued Permit; [30 CFR 773.14(c)(2)]

Proposed Rule 2.07.6(1)(g)(iii) sets forth four criteria under which the Division will find a provisionally issued permit to be improvidently issued and will immediately begin the process of suspending or rescinding that permit. Under Part III.B.27. of this document, we found that proposed Rules 2.07.6(1)(g)(iii), (iii)(A), (iii)(C), and (iii)(D) are substantively identical to their Federal counterparts at 30 CFR 773.14(c) introductory text, (c)(1), (c)(3), and (c)(4), and we are approving them.

In response to Item E.8 of OSMRE's October 9, 2009, 732 letter, Colorado proposed to amend Rule 2.07.6(1)(g)(iii)(B) to be consistent with and no less effective than 30 CFR 773.14(c)(2) by adding a criterion that begins the permit suspension or rescission process if the applicant, operator, or operations that they own or control do not comply with an approved abatement plan or payment schedule described ''in paragraph (g)(i)(B) of this Rule.'' However, in its April 11, 2011, amendment Colorado incorrectly referenced Rule 2.07.6(1)(g)(i)(B), which applies Rule 2.07.6(1)(g) if an applicant owns or controls a surface coal mining and reclamation operation with a violation that is unabated or uncorrected beyond the abatement or correction period.

By letter dated May 20, 2013, OSMRE identified this incorrect rule reference and required Colorado to instead reference paragraph (g)(ii)(B), which requires the Division to find an applicant eligible for a provisionally issued permit if the applicant demonstrates that it, the operator, and mining operations they own or control are complying with the terms of any approved abatement plan or payment schedule. In response to our letter, Colorado now proposes to correctly reference Rule 2.07.6(1)(g)(ii)(B). Colorado's proposed reference change makes Rule 2.07.6(1)(g)(iii)(B) substantively identical to the Federal

counterpart regulation at 30 CFR 773.14(c)(2). Accordingly, we approve the amendment.

28. Rule 2.07.6(2)(d) Through (d)(ii) and (e) Through (e)(ii); Criteria for Review of Permit Applications for Permit Approval or Denial—Criteria for Permit Approval or Denial; [30 CFR 76.11, 761.5, 761.12, 773.15]

In response to Items B., C., D., and J. of OSMRE's April 2, 2001, 732 letter, Colorado proposed revisions to Rules 2.07.6(2)(d) and (e) addressing criteria for permit approval or denial. On January 15, 2008, in *National Mining Association* v. *Kempthorne,* 512 F.3d 702 (D.C. Cir.), the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision to uphold the VER and associated rules that OSMRE published on December 17, 1999 (64 FR 70766). Because the VER rules were challenged in Federal court on several fronts, we informed Colorado that the State could defer responding to our April 2, 2001, letter pending the outcome of the litigation.

By letter dated May 20, 2013, OSMRE notified the Division that Colorado's proposed revisions to Rules 2.07.6(2)(d) and (e) regarding criteria for permit approval or denial were less effective than the Federal counterpart regulations in satisfying the requirements of SMCRA. Apparent typographical errors of the proposed changes rendered the proposed rule confusing and ambiguous. Additionally, OSMRE noted that Rule 2.07.6(2)(d) also contained other substantive errors in that it made lands designated unsuitable for coal mining or under study or administrative proceedings for designation as unsuitable for coal mining subject to valid existing rights, which conflicts with the Federal regulations.

In response to OSMRE's disapproval, Colorado appropriately revised the introductory language of Rule 2.07.6(2)(d) to clarify the exceptions for operations with valid existing rights and operations for which permits existed before the lands came under the protection of the rule or 30 U.S.C. 1272(e). Colorado also correctly removed lands designated or under study or an administrative proceeding for designation as unsuitable for coal mining from the list of lands that are subject to valid existing rights. Subparagraphs (i) and (ii) of Rule 2.07.6(2)(d) are now designated as ''Reserved''. Additionally, Colorado ''reinserted'' the two lands unsuitable subparagraphs (previously deleted from subsection (d)) into the list of findings that must be made for permit application approval at Rule 2.07.6(2)(e), which is consistent with the Federal regulations at 30 CFR 773.15(c). Accordingly, we approve the amendment.

29. Rule 2.07.6(2)(d)(iii)(A); Criteria for Review of Permit Applications for Permit Approval or Denial—Criteria for Permit Approval or Denial; [30 CFR 761.11, 773.15]

Colorado revised Rule 2.07.6(2)(d)(iii)(A) to include study rivers and study river corridors in the lands within which surface mining activities may not be approved to be consistent with 30 CFR 773.15. The proposed revision of Rule 2.07.6(2)(d)(iii)(A) is substantively identical to the Federal counterpart regulations at 30 CFR 773.15, and we approve the amendment.

30. Rule 2.07.6(2)(d)(iii)(D)(II) and (III); Criteria for Review of Permit Applications for Permit Approval or Denial—Criteria for Permit Approval or Denial; [30 CFR 761.11, 761.13, 773.15]

Colorado proposes to revise Rule 2.07.6(2)(d)(iii)(D)(II) to be consistent with 30 CFR 773.15, *Written findings for permit application approval,* and now includes the Federal Coal Leasing Amendments Act of 1975 (30 U.S.C. 181 *et seq.*) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) in the list of laws with which a surface coal mining operation on forest lands must comply. Colorado also proposes the addition of Rule 2.07.6(2)(d)(iii)(D)(III) to reference the procedure for obtaining Secretarial (Secretary of the Interior) approval to conduct surface coal mining operations on any Federal lands within the boundaries of any national forest (sub-subparagraph (D)), and clarifies in Rule 2.07.6(2)(d)(iii)(D)(III) that no permit shall be issued or boundary revision approved before the Secretary makes the findings required by Rule 2.07.6(2)(d)(iii)(D). The requirement for the Secretarial approval is currently in Rule 2.07.6(2)(d), but the procedure for obtaining the required approval from the Secretary was not referenced. The statement that no permit shall be issued or boundary revision approved prior to the Secretarial finding is being relocated within Colorado's Rules; it is currently in Rule 2.07.6(2)(e)(iii).

With the proposed revision of Rule 2.07.6(2)(d)(iii)(D)(II) and the addition of Rule 2.07.6(2)(d)(iii)(D)(III), Colorado's Rules regarding surface coal mining operations on Federal lands within a national forest are substantively identical to the Federal regulations at 30 CFR 773.15 and we approve the amendment.

31. Rules 2.07.6(2)(p) and (q); Criteria for Review of Permit Applications for Permit Approval or Denial—Criteria for Permit Approval or Denial; [30 CFR 773.15(h) and (i)]

Proposed Rule 2.07.6(2)(p) is added to be consistent with the Federal counterpart regulation at 30 CFR 773.15(h). The new rule specifies that the permit applicant must satisfy all of the applicable requirements for special categories of mining prior to permit approval. The references to Colorado Rules 4.23 through 4.29 are appropriate references to the requirements of special categories of mining.

Proposed Rule 2.07.6(2)(q) is added to be consistent with the Federal counterpart regulation at 30 CFR 773.15(i). The new rule clarifies that the Division is allowed to grant exceptions to certain revegetation requirements (*e.g.,* diversity, permanence, cover, self-regeneration, plant succession) when the proposed postmining land use will be long-term intensive agricultural use (*i.e.,* cropland). The references to Rules 4.15.1(2)(c), 4.15.7(3)(b)(i), 4.15.8(1)(a), 4.15.9, and 4.25.5(2) are appropriate references to the special requirements for cropland.

When Colorado proposed to recodify its rules at 2.07.6(2)(f) through (o) to read 2.07.6(2)(e) through (n), it did not correctly renumber newly proposed Rules 2.07.6(2)(p) and (q). Specifically, these rules should have been numbered (o) and (p). Consequently, 2.07.6(2)(o) does not contain any rule language and will be designated as *Reserved*.

Proposed Rules 2.07.6(2)(p) and (q) are substantively identical to the Federal regulations at 30 CFR 773.15(h) and (i), and we approve the amendment.

32. Rules 2.07.8(1)(b) Through (e); Improvidently Issued Permits; [30 CFR 733.21]

In response to Item E.12 of OSMRE's October 2, 2009, 732 letter, Colorado proposed to add new Rules 2.07.8(1)(b) through (e) regarding the initial review and finding requirements for improvidently issued permits. Proposed Rule 2.07.8(1) details the steps the Division must take when it finds that a permit has been improvidently issued as a result of the applicant having unabated or uncorrected violations and, therefore, the applicant is not eligible for the permit.

By letter dated May 20, 2013, OSMRE found that Colorado had incorrectly used the term ''operator'' instead of ''permittee.'' Consequently, Colorado's proposed language at Rule 2.07.8(1) did

not directly correspond to the Federal counterpart language at 30 CFR 773.21(a), which makes clear that the term ''you'' is synonymous with ''the permittee'' (*i.e.,* ''If we, the regulatory authority, have reason to believe that we improvidently issued a permit to you, the permittee . . .''). As a result, we required Colorado to replace the term ''operator'' with ''permittee'' in proposed Rules 2.07.8(c) and (d) in order to be consistent with and no less effective than the Federal regulations at 30 CFR 773.21(c) and (d). We also noted that the terms are not interchangeable, and Colorado consistently distinguishes between ''operator'' and ''permittee'' throughout its rules. Additionally, Colorado proposed to use the phrase ''permittee or operator'' at Rule 2.07.8(1)(b)(3), which is also incorrect because a permittee is the only entity of concern regarding permit eligibility—the operator does not receive a permit.

In response to our concern, Colorado now proposes to use the term ''permittee'' instead of ''operator'' at Rules 2.07.8(1)(c) and (d) to be consistent with the counterpart Federal regulations. Additionally, Colorado proposes to delete the phrase ''or operator'' at Rules 2.07.8(1)(b)(iii) and (e). Subsection (1)(b)(iii) previously stated that the Division will make a finding ''if the permittee or operator continued to own or control the operation with the unabated violation, the violation remains unabated, and the violation would cause the permittee or operator to be ineligible . . .'' Similarly, subsection (e) stated that ''the provisions . . . apply when a challenge . . . concerns a preliminary finding [that] the permittee or operator currently owns or controls, or owned or controlled, a surface coal mining operation.'' Colorado's proposed revisions make the aforementioned rules consistent with and no less effective than the Federal regulations at 30 CFR 773.21(a) through (e). Accordingly, we approve the amendment.

33. Rules 2.07.8(2)(a) Through (c) and (e) Through (g); Improvidently Issued Permits—Notice Requirements for Improvidently Issued Permits; [30 CFR 733.22]

Colorado proposes the addition of language at Rule 2.07.8(2) regarding notice requirements for improvidently issued permits. The proposed Rules at 2.07.8(2) detail the steps the Division must take when it finds that a permit has been improvidently issued as a result of the applicant having unabated or uncorrected violations and, therefore, not eligible for the permit.

Colorado proposes rules at 2.07.8(2)(a) through (c) and (e) through (g) that are substantively identical to the Federal counterpart regulations at 30 CFR 773.22, and we approve the amendment.

34. Rule 2.07.8(2)(d); Improvidently Issued Permits—Notice Requirements for Improvidently Issued Permits; [30 CFR 733.22(d)]

In response to item E.13 of OSMRE's October 2, 2009, 732 letter, Colorado proposed to add new rules regarding improvidently issued permits. Colorado's proposed rules at 2.07.8(2) detail notice requirements for improvidently issued permits.

By letter dated May 20, 2013, OSMRE notified Colorado that it had incorrectly used the term ''operator'' instead of ''permittee'' in its proposed language at Rule 2.07.8(2)(d) and, therefore, this did not directly correspond to the Federal counterpart regulation at 30 CFR 773.22(d). Title 30 CFR 773.21(a) makes clear that the term ''you'' is synonymous with ''the permittee'' (*i.e.,* ''If we, the regulatory authority, have reason to believe that we improvidently issued a permit to you, the permittee . . .). As a result, we required Colorado to replace the term ''operator'' with ''permittee'' in order to be consistent with and no less effective than the Federal regulation at 30 CFR 773.22(d). We also noted that the terms are not interchangeable and Colorado consistently distinguishes between ''operator'' and ''permittee'' throughout its rules.

In response to our concern, Colorado now proposes to use the term ''permittee'' instead of ''operator'' at Rule 2.07.8(2)(d). Colorado's proposed revision makes Rule 2.07.8(2)(d) consistent with and no less effective than the Federal counterpart regulation at 30 CFR 773.22(d), and we approve it.

35. Rules 2.07.9(3), (3)(a), (3)(b), and (6); Post-Permit Issuance Requirement for the Division and Other Actions Based on Ownership, Control, and Violation Information; [30 CFR 774.11(a) Through (h)]

In response to Item G. of OSMRE's October 2, 2009, 732 letter, Colorado proposed rules at 2.07.9(1) through (6) that address post-permit issuance requirements for the Division and other actions based on ownership, control, and violation information. By letter dated May 20, 2013, OSMRE notified Colorado that proposed Rule 2.07.9(3) did not provide the correct State counterpart reference to the Federal regulation at 30 CFR 774.11(c), which states that the regulatory authority will only consider control relationships and violations that would make, or would have made, the applicant or operator ineligible for a permit under 30 CFR 773.12(a) and (b). In addition, Colorado correctly proposed Rules 2.07.6(1)(b)(i), and (ii) as State counterparts to 30 CFR 773.12(a)(1) and (2), but failed to reference its counterpart provision to the Federal regulation at 30 CFR 773.12(b), which states that the regulatory authority will not issue a permit if the applicant or operator are permanently ineligible to receive a permit under 30 CFR 774.11(c). In response to our concern, Colorado now includes a reference to Rule 2.07.6(1)(c) in proposed Rule 2.07.9(3), which is the correct counterpart reference to 30 CFR 773.12(b). Colorado's proposed revision makes Rule 2.07.9(3) consistent with and no less effective than the counterpart Federal regulation at 30 CFR 773.12(b); therefore, we approve it.

OSMRE also identified a concern at Rule 2.07.9(6), wherein Colorado's proposed language closely follows the Federal counterpart regulation at 30 CFR 774.11(f) with one exception. Specifically, the Federal regulation states that ''at any time, we may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof.'' Conversely, Colorado's proposed counterpart at Rule 2.07.9(6) states that: ''At any time, the Division may identify any person who owns or controls an entire operation or any relevant portion or aspect thereof.'' Colorado's current rules and statute provide definitions only for ''surface coal mining operations'' and ''surface coal mining and reclamation operations'' but not for ''operation'' or ''entire operation.'' In addition, Colorado uses the phrase ''a surface coal mining and reclamation operation'' throughout its rules. Consequently, OSMRE required Colorado to change its reference to the term ''operation'' to the phrase ''surface coal mining and reclamation operation'' in order to be consistent with and no less effective the counterpart Federal regulation at 30 CFR 774.11(f). In response to our concern, Colorado now proposes to change the phrase ''an entire operation'' to ''a surface coal mining and reclamation operation.'' Accordingly, we approve the amendment.

Colorado's remaining proposed rules at Rule 2.07.9(1), (2), (4) and (5) are consistent with and no less effective than the Federal counterpart provisions, and are being approved under Part B. of this document.

36. Rule 2.08.4(6)(b)(i); Permit Review, Revisions and Renewals and Transfer, Sale, and Assignment—Revisions to a Permit; [30 CFR 773.6(3)]

Colorado proposes the addition of language at Rule 2.08.4(6)(b)(i) to clarify that only government entities that have jurisdiction over or an interest in the affected area or subject matter are notified when a complete technical revision is submitted to the Division. Notification requirements for receipt of a complete technical revision were previously found at Rule 2.07.3(3)(a), which requires blanket notifications to be sent to all agencies when a complete application for a permit, a permit revision, or a permit renewal is received. This caused confusion on the part of the notified agencies as to why they were being notified when the proposed changes in the technical revision did not pertain to their agency. Colorado proposes this rule amendment in an effort to promote efficiency and reduce confusion with these irrelevant notifications. This proposed rule is substantively identical to the Federal counterpart regulations at 30 CFR 773.6(3)(i) and (ii), which describe how notifications shall be sent to local government agencies with jurisdiction over or an interest in the area of the proposed coal mining and reclamation operation. However, Colorado fails to clarify what kind of operations the rule is referring to when it states that ''The Division shall issue written notification . . . with jurisdiction over or an interest in the area of the proposed operations.'' Colorado's current rules and statute provide definitions only for ''surface coal mining operations'' and ''surface coal mining and reclamation operations''; not for ''operation''. At Rule 2.08.4, there is prior mention of surface coal mining operations at Rules 2.08.4(1)(a) and (5)(c), so one could infer from previous language that a surface coal mining operation is now referred to simply as an ''operation'' at Rule 2.08.4(6)(b)(i). While we recommend that Colorado clarify the operation to be a ''surface coal mining operation'' as part of a future amendment proposal, we nonetheless find that proposed Rule 2.08.4(6)(b)(i) is as effective as the Federal counterpart regulation at 30 CFR 773.6(3), and we approve the amendment.

37. Rules 2.11.4(1) Through (6); Written Decision on Challenges to Ownership or Control Listings or Findings; [30 CFR 773.28]

Colorado proposes language at Rule 2.11.4 that is substantively identical to the Federal counterpart regulation at 30 CFR 773.28. The proposed Rule sets forth requirements for the Division to issue written decisions and findings on challenges to ownership and control listings and findings; establishes means of service of those findings to the challenger; outlines appeal procedures for the challenger; and requires the Division to update AVS when ownership and control listings become final.

There is a discrepancy with the proposed language at Rule 2.11.4(5) regarding reference to appellate procedures to follow when an appeal of a Division decision about ownership and control findings. The Federal regulation at 30 CFR 773.28(e) refers the reader to 43 CFR 4.1380 through 4.1387, which govern the procedures for review of a written decision issued by OSMRE under 30 CFR 773.28 on a challenge to a listing or finding of ownership or control. In proposed Rule 2.11.4(5), the State provides Rule 2.07.4 as the State counterpart to the Federal reference 43 CFR 4.1380 through 4.1387. Rule 2.07.4, *Division and Board Procedures for Review of Permit Applications,* provides appellate procedures for contesting permitting decisions by the Division and by the Board, but no specific procedures are outlined for contesting decisions regarding ownership and control findings. However, because the administrative appellate process outlined in Rule 2.07.4 contains similar administrative remedies (*i.e.,* temporary relief, similar timeframes, request for informal review, etc.) to the Federal counterpart regulations at 43 CFR 4.1380 through 4.1387, this is not interpreted to be less effective than the process referenced in the Federal regulations. Although ownership and control challenges are not described in Rule 2.07.4, Colorado states specifically in Rule 2.11.4(5) that anyone who receives a written decision on challenges to ownership or control listings or findings, and wishes to appeal that decision, may do so as set forth in Rule 2.07.4, leading the reader to believe that the processes governed by Rule 2.07.4 will be used for ownership and control challenges. Based on the above discussion, OSMRE finds Colorado's proposed language at Rules 2.11.4(1) through (6) to be no less effective than the counterpart Federal regulation; therefore, we approve the amendment.

38. Rule 3.03.2(1); Release Of Performance Bonds—Procedures for Seeking Release of Performance Bond; [30 CFR 800.40(a)(2)]

Colorado proposes additional language at Rule 3.03.2(1) regarding the requirements for bond release applications by requiring that the permittee send written notification of an intention to seek bond release to ''other governmental agencies as directed by the Division.'' This proposed language ensures that any government agencies with jurisdiction over or an interest in a permit area are notified of a pending bond release application. This additional language expands upon the Federal counterpart regulation for bond release applications at 30 CFR 800.40(a)(2) and is no less effective in satisfying the requirements of SMCRA. We approve the amendment.

39. Rules 4.03.1, .2, and .3; Performance Standards: Roads—Haul Roads, Access Roads, and Light-Use Roads; [30 CFR 816.105(c) and 817.150(c)]

Colorado proposes revisions to Rules 4.03.1, 4.03.2, and 4.03.3, as required by 30 CFR 906.16(f), *Required program amendments.* The proposed revisions to Rules 4.03.1, 4.03.2, and 4.03.3 are consistent with the Federal counterpart regulation at 30 CFR 816.150(c). Colorado proposes to delete the general provision allowing alternative design criteria to clarify that the Division would not approve alternatives to all of the access road design and construction criteria presented in Rules 4.03.1, 4.03.2, and 4.03.3, as is implied by paragraph (e) of the General Requirements for haul roads and access roads. The proposed revision also adds provisions for use of alternative design criteria and specifications for road grades (*i.e.,* ''vertical alignment'') of haul roads, access roads, and light-use roads. With the addition of these provisions, the existing rules specify, for haul roads, access roads, and light-use roads, whether alternatives to design and construction criteria may be approved by the Division, thus rendering paragraph (e) redundant and unclear. The proposed language is consistent with and no less effective than the Federal regulations in satisfying the requirements of SMCRA. We, therefore, approve the amendment.

40. Rules 4.06.4(2)(a) and (3); Topsoil—Redistribution; [30 CFR 816.22(d) and 817.22(d)]

Proposed Rule 4.06.4(2)(a) is substantively identical to the Federal counterpart regulation at 30 CFR 816.22(d)(1)(i) and 817.22(d)(1)(i), except that Colorado proposes language to protect against potential abuses by ensuring that the permit application includes a well-defined and justified plan for soil replacement. Specifically, proposed Rule 4.06.4(2)(a) ensures that the permit application includes a well-

defined and justified plan for soil replacement by requiring that permit applications describe a range in replacement thickness for defined areas of the reclaimed landscape based on the pertinent land use, topography, drainage system, and revegetation factors and objectives.

Proposed Rule 4.06.4(3) was previously located at Rule 4.14.2(5), which addresses backfilling and grading (general grading requirements). This language is appropriately proposed to be moved to Rule 4.06.4(3) because it is specific to topsoil replacement. OSMRE concludes that the proposed changes to Rules 4.06.4(2)(a) and 4.06.4(3) are no less effective than the Federal regulations in satisfying the requirements of SMCRA, and we approve the amendment.

41. Rules 4.07.3 and .3(1); Sealing of Drilled Holes and Underground Openings; [30 CFR 817.13 and 817.15]

Rule 4.07.3 has been revised to include language that explicitly specifies the methods and materials for permanent closure of shafts, drifts, adits, tunnels, or mine entryways. Specifically, proposed Rule 4.07.3(1)(a) requires that shaft openings be filled for the entire length of the shaft and for the first fifty (50) feet from the bottom of the coal bed, the fill material must consist of non-combustible materials; that caps consist of six-inch concrete or equivalent; and that caps have a vent of at least two inches in diameter and extend for a distance of fifteen feet above the surface of the shaft. Proposed Rule 4.07.3 is analogous to the Federal counterpart regulation at 30 CFR 817.15, and by reference to the Department of Labor, Mine Safety and Health Administration's regulations at 30 CFR 75.1711, *Mandatory Safety Standards—Underground Coal Mines, Sealing of mines.* The Federal performance requirements for permanent closure of shafts, drifts, adits, tunnels or mine entryways described in 30 CFR 75.1711 require that shaft openings be filled for the entire length and for the first fifty (50) feet from the bottom of the coal bed, that the fill consist of incombustible materials; that caps consist of six-inch concrete or equivalent; and that caps have a vent of at least two inches in diameter and extend for a distance of fifteen feet above the surface of the shaft. The revisions to proposed Rule 4.07.3(1)(a) are substantively identical and, therefore, no less effective than the Federal counterpart at 30 CFR 817.15, and by reference at 30 CFR 75.1711.

Rule 4.07.3(1) has been revised to require that permanent closure construction reports be certified by a qualified, registered Professional Engineer. The Federal regulations at 30 CFR 817.13, 817.14 and 817.15, which address the general requirements, temporary, and permanent casing and sealing of exposed underground openings, do not explicitly require certification of construction reports by a qualified, registered Professional Engineer. However, Federal regulations 30 CFR 784.13 (*Reclamation Plan*) and 30 CFR 784.23 (*Operations Plan: Maps and Plans*) require that maps, plans, cross sections, and environmental protection measures be prepared under the direction of a registered Professional Engineer and that maps and plans be certified by a registered Professional Engineer. We find that the requirement for certification of closure construction reports by a qualified, registered Professional Engineer as specified in proposed Rule 4.07.3(1) is consistent with the Federal counterpart regulations, and, therefore, Rule 4.07.3(1) is no less effective than the Federal counterparts.

The proposed language at Rule 4.07.3(1)(b) states that the slope or drift be closed with a solid, substantial, incombustible material such as concrete blocks, tile or bricks, placed a distance of at least 25 feet from the opening and that the slope or drift. Proposed Rule 4.07.3(b) requires that the opening of the slope or drift be backfilled to the roof. Proposed Rule 4.07.3(b) allows for up to a three (3) inch void space between the top of the backfill to the roof up to the entrance of the slope or drift. The slope or drift would be backfilled to the roof with no void space at the entrance. The Federal counterpart regulation at 30 CFR 817.15, *Casing and sealing of underground openings: Permanent,* and by reference 30 CFR 75.1711 requires that permanent closures of slopes or drifts be completely backfilled for 25 feet, or closed with a solid, substantial, incombustible material such as concrete block, tile or brick. We note that the proposed language at Rule 4.07.3(1)(b)(i) requires both a substantial, incombustible closure material, such as tile, brick or concrete block and backfill of the slope or drift for 25 feet to the entrance with the entrance being backfilled to the roof. The proposed language at Rule 4.07.3(1)(b)(ii) requires backfill of 25 feet of the slope or drift from the entrance with the inner three feet of the backfill consisting of rock material with a minimum diameter of two feet. We note the distinction between the State rules and Federal regulations is significant because the State rule is requiring both backfill of the slope or drift to 25 feet from the entrance and placement of some sort of substantial, incombustible material such as concrete block, tile, brick, or two-foot diameter rock. The Federal counterpart allows for either construction of a tile, block or brick bulkhead, or backfill of 25 feet of the slope or drift from the entrance. We find that Rule 4.07.3(1)(b) is no less effective than its Federal counterpart at 30 CFR 817.15 as Colorado's proposed rule requires both a solid, substantial, incombustible material bulkhead and complete backfill of 25 feet of slope or drift from the entrance, and we approve the amendment.

OSMRE notes that Rule 4.07.3(1)(b) allows for a three-inch void space between the top of the backfill and the roof in the intervening 25-foot length of the backfill between the bulkhead and the entrance of the slope or drift while requiring that the entrance itself be backfilled to the roof of the slope or drift with no void space. Federal regulations at 30 CFR 817.15 and 75.1711 do not have a backfill height to roof requirement, either at the mine entrance or along the mine tunnel. We find that Colorado's proposed requirement is an extra measure to protect human health and the environment by physically prohibiting access to backfilled tunnels at the entrance, and we approve the amendment.

42. Rule 4.08.4(8); Use of Explosives—Surface Blasting Requirements; [30 CFR 816.67(c) and 817.67(c)]

Colorado proposes to amend Rule 4.08.4(8) to be consistent with proposed Rule 1.04(79), which defines ''occupied residential dwelling.'' We approve the proposed definition for ''occupied residential dwelling'' in Part III.B. of this document.

Additionally, Colorado proposes additional language at Rule 4.08.4(8) stating that flyrock, including blasted material traveling along the ground, shall not be cast beyond the topsoil stripping limit resulting in loss of resource. This requirement expands upon the Federal counterpart regulation at 30 CFR 816.67 and 817.67, *Use of Explosives: Control of adverse effects.* Colorado proposes to amend this rule to protect the environment by clarifying that flyrock resulting in topsoil resource contamination is prohibited. The proposed rule is no less effective than the Federal counterpart regulation at 30 CFR 816.67 and 817.67; therefore, we approve the amendment.

43. Rule 4.14.2(5); Performance Standards, General Grading Requirements; [30 CFR 816.102(j)]

Proposed Rule 4.14.2(5) is substantively identical to the Federal regulation at 30 CFR 816.102(j). Colorado proposes to delete language regarding final surface and seedbed preparation of soil. The deleted language is appropriately proposed to be moved under Rule 4.06.4, *Topsoil Distribution,* because it addresses topsoil replacement. The proposed revision is no less effective than the Federal regulations in satisfying the requirements of SMCRA, and we approve the amendment.

44. Rules 4.14.4(1), (1)(a), and (1)(b); Thin Overburden; [30 CFR 816.104(a)]

In letters dated June 19, 1997, and April 4, 2008, OSMRE notified Colorado that their definition for ''thin overburden'' was not as effective as the Federal counterpart definition at 30 CFR 816.104(a). Colorado proposes a revised definition for ''thin overburden'' at Rule 4.14.4(1), which is substantively identical to the Federal regulation at 30 CFR 816.104(a). Whereas the Federal regulation first defines ''thin overburden'' at 30 CFR 816.104(a), then specifies the performance standards applicable to ''thin overburden'' at 30 CFR 816.104(b), the Colorado Rule first specifies the areas where the performance standards for thin overburden are applicable (Rule 4.14.4(1)), then specifies the performance standards (Rule 4.14.4(2)). Under the proposed rule, the description of the areas where the thin overburden performance standards are applicable is substantively identical to the definition of ''thin overburden'' in the Federal regulations (30 CFR 816.104(a)). The Federal definition uses the phrase ''spoil and other waste materials available from the entire permit area'' while Colorado's proposed rule uses the phrase ''spoil and other waste materials available from the area disturbed by surface coal mining operations;'' however, the two phrases are synonymous under the definitions of ''disturbed area'' and ''permit area'' at Colorado Rules 1.04(36) and (89), respectively.

The rules referenced in the proposed performance standard are appropriate. The proposed rule specifies that paragraph (2) of Rule 4.14.4 applies only ''where there is insufficient spoil and other waste materials available from the area disturbed by surface coal mining operations to restore the disturbed area to its approximate original contour'' and ''when surface mining activities cannot be carried out to comply with Rule 4.14.1 to achieve the approximate original contour,'' which comports with the Federal regulations. Rule 4.14.1 contains the general performance standards for backfilling and grading, one of which specifies that all areas disturbed by surface coal mining operations shall be returned to their approximate original contour (Rule 4.14.1(2)(a)). Proposed Rules 4.14.4(1), (1)(a), and (1)(b) are substantively identical to the Federal counterpart regulation at 30 CFR 816.104(a) and are no less effective than the Federal regulations in satisfying the requirements of SMCRA, and we approve the amendment.

45. Rules 4.14.5(1), (1)(a), and (1)(b); Thick Overburden; [30 CFR 816.105(a)]

In letters dated June 19, 1997, and April 4, 2008, OSMRE notified Colorado that their definition for ''thick overburden'' was not as effective as the Federal counterpart definition at 30 CFR 816.105(a). Colorado proposes a revised definition for ''thin overburden'' at Rule 4.14.5(1), which is substantively identical to the Federal regulation at 30 CFR 816.105(a). Whereas the Federal regulations first defines ''thick overburden'' in 30 CFR 816.105(a), then specifies the performance standards applicable to ''thick overburden'' in 30 CFR 816.105(b), the Colorado Rule first specifies the areas where the performance standards for thick overburden are applicable, in Rule 4.14.5(1), then specifies the performance standards, in Rule 4.14.5(2). Under the proposed rule, the ''description'' of the areas where the thick overburden performance standards are applicable is substantively identical to the definition of ''thick overburden'' in the Federal regulations (30 CFR 816.105(a)). The Federal definition uses the phrase ''spoil and other waste materials available from the entire permit area'' while Colorado's proposed rule uses the phrase ''spoil and other waste materials available from the area disturbed by surface coal mining operations;'' however, the two phrases are synonymous under the definitions of ''disturbed area'' and ''permit area'' at Colorado Rules 1.04(36) and (89), respectively.

The rules referenced in the proposed performance standard are appropriate. The proposed Rule specifies that Paragraph (2) of Rule 4.14.5 applies only ''where there is more than sufficient spoil and other waste materials available from the area disturbed by surface coal mining operations to restore the disturbed area to its approximate original contour'' and ''when surface mining activities cannot be carried out to comply with Rule 4.14.1 to achieve the approximate original contour,'' which comports with the Federal regulations. Rule 4.14.1 contains the general performance standards for backfilling and grading. Specifically, Rule 4.14.1(2)(a) states that ''all areas disturbed by surface coal mining operations shall be returned to their approximate original contour.''

Proposed Rule 4.14.5(1) is substantively identical to the Federal regulation at 30 CFR 816.105(a). It is no less effective than the Federal regulations in satisfying the requirements of SMCRA, and we approve the amendment.

46. Rule 4.15.7(5); Determining Revegetation Success: General Requirements and Standards; [30 CFR 816.116(c) and 817.116(c)]

As part of its April 11, 2011, amendment submittal, Colorado proposed language at Rule 4.15.7(5) describing revegetation success standard demonstrations for areas with five-year liability periods and ten-year liability periods. Specifically, Colorado proposed that for grazingland, pastureland, or cropland, applicable revegetation success standards shall be demonstrated during any growing season after year four of the liability period where the minimum five-year liability period applies (areas with greater than 26.0 inches of annual average precipitation). Likewise, Colorado proposed the same requirement for areas approved for a postmining land use of rangeland.

By letter dated May 20, 2013, OSMRE notified the Division that Colorado's proposed revisions to Rule 4.15.7(5) were inconsistent with the Federal counterpart regulations at 30 CFR 816.116 and 817.116 when applying this rule to areas of more than 26.0 inches of annual average precipitation on grazingland, pastureland, or cropland as the permitted postmining use. Title 30 CFR 816.116(c) and 817.116(c) require a liability period of five full years and that the vegetation parameters identified in paragraph (b) for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Colorado's proposed changes to Rule 4.15.7(5) allowed for only one year of demonstration success, after year four of the liability period.

Additionally, OSMRE found that the proposed change in the definition of ''rangeland'' (recommended for approval in a different technical review) includes both grazingland and fish and

wildlife habitat. The proposed rules, again, allowed for only one year of demonstration success, after year four of the liability period. With the inclusion of ''grazingland'' into the definition of rangeland, this proposed rule should have required two demonstrations of success for the herbaceous production after year one of the five-year liability period; it required only one demonstration after year four of the liability period.

Colorado now proposes to add language at Rule 4.15.7(5) that requires, in areas where the minimum five year liability period applies and the post mining land use is grazingland, pastureland, cropland, forestry, recreation, wildlife habitat, undeveloped land, and rangeland, that vegetation standards shall be demonstrated during any two growing seasons, except the first year of the liability period. Colorado's proposed revisions make Rule 4.15.7(5) consistent with and no less effective than the Federal counterpart regulations for revegetation standards for success at 30 CFR 816.116(c) and 817.116(c). Accordingly, we approve the amendment.

47. Rules 4.15.7(5)(e) and (g); Determining Revegetation Success: General Requirements and Standards; [30 CFR 816.116(c)(4) and 817.116(c)(4)]

At Rule 4.15.7(5)(e), Colorado proposes to add interseeding to the list of normal husbandry practices that are acceptable for pasture land forage production. OSMRE previously approved the use of interseeding as a normal husbandry practice in Colorado. In that amendment proposal, Colorado noted that interseeding on rangelands and wildlife habitat is a normal husbandry practice recommended by biologists and land managers to enhance established vegetation.

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow a State to approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSMRE. These selective practices are required to be normal husbandry practices that do not extend the period of responsibility for revegetation success and bond liability. Such practices can be expected to continue as part of the post-mining land use or be discontinued after the liability period expires if it will not reduce the probability of permanent vegetation success. Approved practices shall be normal husbandry practices with in the region for unmined land 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. OSMRE has determined that interseeding associated with pasture land forage production is a normal husbandry practice that meets the criteria to be approved under 30 CFR 816.116(c)(4) and 817.116(c)(4) and is no less effective than the Federal regulations.

Additionally, Colorado proposes to delete language that includes the written recommendation by the Colorado State University Cooperative Extension director for the county in which the mine is located as a type of documentation that irrigation, interseeding, and irrigation rates and methods are appropriate. Colorado proposes to add ''or site-specific written recommendations'' of the Cooperative Extension Service of Colorado State University, the Colorado Department of Agriculture, or the USDA to determine if the irrigation, interseeding, and irrigation rates and methods are appropriate. This proposed revision is no less effective than the Federal Regulations because the Division is still requiring that the documentation is provided by qualified parties.

At Rule 4.15.7(5)(g), Colorado proposes to add ''grazingland'' to the list of postmining land uses where interseeding is considered a normal husbandry practice. In this amendment proposal, Colorado proposes a new definition for grazingland, which is approved under Part III.B. of this document. Interseeding associated with grazingland forage production is a normal husbandry practice that meets the criteria to be approved under 30 CFR 816.116(c)(4) and 817.116(c)(4) and is no less effective than the Federal regulations. The proposed revisions to Rules 4.15.7(5)(e) and (g) are no less effective than the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4), and we, therefore, approve the amendment.

48. Rules 4.15.8(1) Through (9); Revegetation Success Criteria; [30 CFR 816.116 and 817.116]

The proposed rule changes Rules 4.15.8(1) through (9) to comport with the Federal counterpart regulations at 30 CFR 816.116(a)(1) through (2), 817.116(a)(1) through (2) and 816.116(b). These proposed rule changes allow for the success of revegetation with appropriate data collection (total harvest for herbaceous production and a complete census for woody plant density) that is no less stringent than the counterpart Federal regulations. This proposed rule does not eliminate any currently approved success determinations, and when deemed appropriate by the Division, allows for additional techniques to determine revegetation success.

Proposed Rules 4.15.8(2)(a) through (d) describe the applicable success criteria for grazingland, pastureland, recreation, fish and wildlife habitat, undeveloped land, forestry, and rangeland postmining land use categories. With the exception of rangeland (whose newly proposed definition is approved under Part III.B. of this document), all of these postmining categories are explicitly named with their corresponding success standards at 30 CFR 816.116(b) and 817.116(b). For grazingland and pastureland, Colorado's proposed vegetation success standards (vegetation cover and herbaceous production) are no less effective than the counterpart Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) (ground cover and the production of living plants). For forestry, Colorado's proposed vegetation success standards (tree stocking density and vegetation cover) are as effective as the counterpart Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) (tree and shrub stocking and vegetative ground cover). For recreation, fish and wildlife habitat and undeveloped land postmining land uses, these proposed success standards (woody plant density, species diversity, and vegetation cover) are more effective than the counterpart Federal regulations (tree and shrub stocking and vegetative ground cover). This proposed language at Rule 4.15.8 is no less effective than the counterpart Federal regulations at 30 CFR 816.116 and 817.116, and we approve the amendment.

49. Rule 4.15.9; Revegetation Success Criteria: Cropland; [30 CFR 816.116 and 817.116]

The first proposed change to Rule 4.15.9 eliminates a provision that specifically outlines the acceptable sampling protocol for annual grain crops during the liability period for cropland in Colorado. There is no Federal regulation within 30 CFR that specifically mentions annual grain crops when referring to cropland performance standards on coal mine reclamation; therefore, the elimination of this statement in Rule 4.15.9 is appropriate.

The next proposed rule revision changes the description of the liability period for cropland success from, ''two of the last four years of the liability period established in 3.02.3,'' to ''during the growing season of any two years

following year six, where [the] minimum 10 year liability period applies, pursuant to 3.02.3; but bond release cannot be approved prior to year 10.'' This proposed statement is nearly identical to the corresponding Federal regulation for areas with 10 full years of responsibility on cropland. Title 30 CFR 816.116(c)(3)(i) states the vegetation parameters shall equal or exceed the approved success standards ''during the growing season of any two years after year six of the responsibility period.'' Although this proposed change to Rule 4.15.9 does not specifically include the liability period for areas under the five full years of responsibility on cropland (those that receive more than 26.0 inches of annual average precipitation), the performance standards for cropland, which have less than five full years of liability, are adequately described in Rule 3.02.3. Therefore, this is an appropriate Rule change.

At the end of Rule 4.15.9, Colorado proposes to delete the requirement ''with 90% statistical confidence,'' and replace it with, ''based on applicable demonstration methods of 4.15.11.'' Rule 4.15.11, in its current approved form, includes a 90% statistical confidence along with other approved methods to demonstrate revegetation success. This change does not substantively alter Colorado's rules and is no less effective than the counterpart Federal regulations. We, therefore, approve these aforementioned proposed changes to Rule 4.15.9.

50. Rule 4.15.11(1); Revegetation Sampling Methods and Statistical Demonstrations for Revegetation Success; [30 CFR 816.116 and 817.116]

The proposed change to Rule 4.15.11(1) comports with the counterpart Federal regulation at 30 CFR 816.116(1) and 817.116(1), which states that ''[s]tandards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public.'' This proposed rule change allows for the success of revegetation to be determined by either a total harvest success demonstration for herbaceous production or a complete census for woody plant density, if either of these two options ''is appropriate and practicable, no less effective than statistically valid sampling,'' upon approval by the Division. This proposed rule does not eliminate any currently approved success determinations; rather, it allows for two additional techniques to determine revegetation success that are no less effective than the Federal regulations; therefore, we approve the amendment.

51. Rules 4.15.11(2)(c) and (d); Revegetation Sampling Methods and Statistical Demonstrations for Revegetation Success; [30 CFR 816.116 and 817.116]

As part of its April 11, 2011, amendment submittal, Colorado proposed revisions to Rule 4.15.11(2)(c) and the addition of Rule 4.15.11(2)(d), which describe revegetation sampling methods and statistical demonstrations for revegetation success. During our review of Colorado's proposed rules, OSMRE found that, while the proposed rule changes to 4.15.11(2)(c) and (d) generally conformed with 30 CFR 816.116(a) and 817.116(a), they were not consistent with each other and were confusing. The proposed revision to Rule 4.15.11(2)(c) described when the current statistical methods should be used. However, this explanation did not agree with the literature referenced in newly proposed Rule 4.15.11(2)(d). When sampling a reference area to determine reclamation success, the Division proposed to allow a one-sample t-test to be used; the literature referenced explicitly explains why this method is incorrect and that a one-sample t-test should only be used with a predetermined fixed value (*i.e.,* a technical standard). When using mean values from a reference area sampling technique, there is an error associated with this value. This sampling error is not present when using a predetermined fixed value or minimum standard.

By letter date May 20, 2013, OSMRE notified Colorado of the deficiencies we identified regarding proposed Rules 4.15.11(2)(c) and (d) for revegetation sampling methods and statistical demonstrations for revegetation success. In response to our May 20, 2013, concern letter, the Division explained that it considers the use of the reference area sample mean to be an acceptable success standard when using a one-sample t-test to evaluate revegetation success, which is reflected in Rule 4.15.11(2), that was previously approved by OSMRE on March 24, 2005. Colorado states that this has been an accepted practice in Colorado for many years and is part of the ''Division Guideline Regarding Selected Coal Mine Bond Release Issues'', which was created April 18, 1995. The Division explains that it recognized that there is some discrepancy between the referenced document, which states that a one-sample t-test should only be used with a predetermined fixed value (*i.e.,* a technical standard). There may be other concerns with the use of a particular formula for a given circumstance. The Division explains that for that reason, it revised proposed Rule 4.15.11(2)(d) to require the Division to approve in advance the techniques that the operator proposes to use from that document.

After careful review of the explanation provided by the Division defending the proposed changes to Rule 4.15.11(2)(c), and the additional of Rule 4.15.11(2)(d), OSMRE finds that the proposed language that is no less effective than the counterpart Federal regulations at 30 CFR 816.116 and 817.116 in satisfying the requirements of SMCRA. The Division proposes language that adequately describes and justifies sample adequacy and the reverse null one-sample t-test when determining revegetation success. The reference document entitled, ''Evaluation and Comparison of Hypothesis testing Techniques for Bond Release Applications,'' prepared by McDonald, Howlin, Polyakova, and Bilbrough for the Wyoming Abandoned Mine Lands Program, contains language that is consistent with proposed Rules 4.15.11(2)(c) and (d). Accordingly, we approve the amendment.

52. Rules 4.15.11(3)(b)(ii) and (c); Revegetation Sampling Methods and Statistical Demonstrations for Revegetation Success; [30 CFR 816.116and 817.116]

Colorado proposes to delete language at Rules 4.15.11(3)(b)(ii) and (c) regarding the sample adequacy approach and hypothesis test approach associated with Stabilization of the Running Mean, as well as the companion hypothesis test. The proposed deletion comports with 30 CFR 816.116(1) and 817.116(1), which states that ''[s]tandards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public.'' The Division has kept an adequate number of statistical analyses at existing Rules 4.15.11(2) and 4.15.11(3) and has proposed more statistically valid analyses at proposed Rule at 4.15.11(2)(d), and we approve the amendment.

53. Rule 4.16.3(6); Performance Standards—Postmining Land Uses, Alternative Land Uses; [30 CFR 816.133(c) and 817.133(c)]

Rule 4.16.3(6) contains special requirements for changing certain premining land uses to a postmining land use of cropland. The Federal regulations do not include such special requirements; however, Colorado's special requirements for cropland are

consistent with the general Federal requirements that ''the use does not present any . . . threat of water diminution or pollution'' meaning there is sufficient water available and committed to maintain crop production, and that ''there is a reasonable likelihood for achievement of the use,'' meaning that topsoil quality and depth are sufficient to support the proposed use. Colorado's proposed revision corrects the premining land use, ''range,'' to ''rangeland'' and adds ''grazingland'' (a proposed new land use category) to the list of the premining land uses, which, if changed, to ''cropland'' would be subject to the special requirements of Rule 4.16.3(6). The correction of ''range'' to ''rangeland,'' and the addition of ''grazingland'' is consistent with the Federal regulations. The proposed revision of Rule 4.16.3(6) is no less effective than the Federal regulations in satisfying the requirements of SMCRA. We, therefore, approve the proposed amendment.

54. Rules 4.20.1(1); Performance Standards: Subsidence Control—General Requirements; [30 CFR 817.121(a)(1)]

In response to 732 letters we sent the State on June 5, 1996, and April 4, 2008, Colorado proposed changes to Rule 4.20.1(1), Subsidence Control—General Requirements. Specifically, Colorado proposed to revise Rule 4.20.1(1) to expand protection from material subsidence damage to structures, renewable resource lands, and water supplies and to change the proviso that nothing in Rule 4.20 shall be construed to ''prohibit the standard method of room and pillar mining'' to ''prohibit or interrupt underground coal mining operations.'' By letter dated May 20, 2013, OSMRE notified Colorado that the proposed revisions to Rule 4.20.1(1) were less effective than the counterpart Federal regulations in satisfying the requirements of SMCRA. The proposed revision of Rule 4.20.1(1) generally comported with the Federal regulations at 30 CFR 817.121(a)(1); however it failed to require that underground mining activities shall be planned and conducted so as to maximize mine stability and inappropriately changed the proviso. In response to OSMRE's concern, Colorado now proposes to add the requirement that underground mining activities shall be planned and conducted so as to maximize mine stability and removed the proposed change to the proviso from the proposed revision of Rule 4.20.1(1). We, therefore, approve the amendment.

55. Rules 4.20.3(1) Through (4); Performance Standards: Subsidence Control—Surface Owner Protection; [30 CFR 817.121(a) Through (c)]

As part of their April 11, 2011, amendment proposal, Colorado proposed revisions to Rules 4.20.3(1) through (5) regarding subsidence control and surface owner protection, in response to 732 letters that we sent the State on June 5, 1996, and April 4, 2008. Specifically, Colorado proposed to revise Rules 4.20.3(1) through (4) to expand the protection of surface owners from material subsidence damage to structures, renewable resource lands, and water supplies. Colorado proposes a non-substantive change to Rule (5) by including the word ''Rule''. By letter dated May 20, 2013, OSMRE found Colorado's proposed revisions to Rules 4.20.3(1) through (4) to be less effective than the counterpart Federal regulations in satisfying the requirements of SMCRA. The proposed revision of Rules 4.20.3(1) through (4) generally comported with the Federal regulations at 30 CFR 817.121(a) through (c); however Colorado failed to require that the permittee must ''adopt measures consistent with known technology that . . . maximize mine stability'' and did not extend the protections to surface lands, as well as renewable resource lands, structures, and water supplies. In response to OSMRE's disapproval, Colorado corrected the designation of the subparagraphs in Rule 4.20.3(1) from (i) and (ii) to (a) and (b) and appropriately added ''surface lands'' to the protections afforded under Rules 4.20.3(1) and (2). Additionally, Colorado proposes to add ''surface lands'' to the protections afforded under Rule 4.20.3(1) to be consistent with the Federal counterpart regulations at 30 CFR 817.121(a) through (c).

Colorado also incorrectly revised the April 11, 2011, proposed amendment by changing the second option of the first paragraph of Rule 4.20.3(1) from ''adopt mining technology that provides for planned subsidence in a predictable and controlled manner'' to ''adopt measures consistent with known technology that maximize mine stability and provide for planned subsidence in a predictable and controlled manner.'' To make Rule 4.20.3(1) consistent with the Federal regulations at 30 CFR 817.121(a)(1), Colorado responded to Item No. 22 of our May 20, 2013, letter by changing the first paragraph of proposed Rule 4.20.3(1) requiring that each person, who conducts underground mining activities, must either adopt measures consistent with known technology that prevent subsidence from causing material subsidence damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands, or must adopt mining technology that provides for planned subsidence in a predictable and controlled manner. This language is as effective as the Federal counterpart regulation at 30 CFR 817.121(a)(1). Colorado continues to require, in paragraph 2 of proposed Rule 4.20.3(1), that, if the permittee employs mining technology that provides for planned subsidence, the permittee must take necessary measures to minimize material subsidence damage to the extent technologically and economically feasible to structures related thereto, unless the permittee has written consent of the structure's owners, or the anticipated damage would constitute a threat to health or safety and the costs of such measures exceed the anticipated costs of repair. The proposed language in paragraph two of Rule 4.20.3(1) is no less effective than the Federal counterpart regulations at 30 CFR 817.121(a)(2)(1) and (2). Accordingly, we approve the amendment.

Additionally, Colorado proposes language at Rule 4.20.3(3) consistent with 30 CFR 817.121(c)(4)(v), which allows the regulatory authority to consider all relevant and reasonably available information when making a determination whether or not damage to protected structures was caused by subsidence from underground mining, and we approve the amendment.

56. Rules 4.20.4(1) Through (5); Performance Standards: Subsidence Control—Buffer Zones; [30 CFR 817.121(d) Through (f)]

As part of its April 11, 2011, amendment proposal, Colorado proposed changes to Rules 4.20.4(1) through (4), regarding Subsidence Control—Surface Owner Protection. Specifically, Colorado proposed to revise Rules 4.20.4(1) through (4) to reflect the proposed new definition of ''material subsidence damage'' and to correct a reference to a governmental unit that had been restructured. By letter dated May 20, 2013, OSMRE notified Colorado that the proposed revisions to Rules 4.20.4(1) through (4) were less effective than the counterpart Federal regulations at 30 CFR 817.121 in satisfying the requirements of SMCRA. Specifically, OSMRE found that Rule 4.20.4 failed to provide the Division with the power to ''limit the percentage of coal extracted under or adjacent'' to ''(1) public buildings and facilities; (2) churches, schools, and hospitals; or (3) impoundments with a storage capacity

of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more,'' and Rule 4.20.4 failed to provide the Division with the power to ''suspend mining under or adjacent to [(1) public buildings and facilities; (2) churches, schools, and hospitals; or (3) impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more and any aquifer or body of water that serves as a significant water source for any public water supply system] until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities'' if subsidence causes material damage to any of the features or facilities.

In response to OSMRE's concern, Colorado appropriately added requirements that authorized the Division to ''limit the percentage of coal extracted'' and to ''suspend mining until the subsidence control plan is modified to ensure prevention of further material damage,'' which corrected the inconsistencies with the Federal regulations. Specifically, Colorado added a provision to Rules 4.20.4(1) and (3) that requires ''if the Division determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above, it may limit the percentage of coal extracted under or adjacent thereto''. Additionally, Colorado added new Rule 4.20.4(4) that requires ''if subsidence causes material damage to any of the features or facilities covered by paragraphs (1), (2), or (3) of this Rule, the Division may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities,'' and renumbered the existing Rule 4.20.4(4) to 4.20.4(5). Colorado also revised Rule 4.20.4(2) by protecting ''bodies of water'' in addition to aquifers that serve as a significant source of water supply to any public water system. We, therefore, approve the amendment.

57. Rule 4.25.5(3)(d); Revegetation; [30 CFR 816.116(a), 823.15]

At Rule 4.25.5(3)(d), Colorado proposes two substantive Rule changes. The first proposed change, the addition of ''an appropriate total harvest method, or . . .'' seeks to include this type of production standard in Colorado's rules. This Rule is no less effective than the counterpart Federal regulation at 30 CFR 816.116(a)(1), which states that ''[s]tandards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority, described in writing, and made available to the public.'' Colorado also proposes the addition of the clause: ''If statistical methods are employed . . .'' to the second sentence of Rule 4.25.5(3)(d). The Federal regulation at 30 CFR 823.15(b)(2) states that soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area, and a statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the regulatory authority in consultation with the U.S. Soil Conservation Service. This proposed change to the second sentence of proposed Rule 4.25.5(3)(d) is no less effective than the Federal counterpart regulation at 30 CFR 823.15(b)(2). Lastly, Colorado proposes to update the name of the USDA agency responsible for prime farmlands from the Soil Conservation Service to the Natural Resources Conservation Service. This change is appropriate, and we approve the amendment.

58. Rule 5.03.2(4)(b)(ii); Enforcement—Cessation Orders and Notices of Violation; [30 CFR 843.15]

Colorado proposes language that allows for a person to obtain review of a notice of violation or cessation order in a public hearing before the Board and/or an *informal public hearing,* in accordance with Rule 5.03.2(7). The proposed revision of Rule 5.03.2(4)(b)(ii) is consistent with the Federal regulations at 30 CFR 843.15. The references to Rules 5.03.2(7), *Informal public hearings,* and 5.03.5, *Formal Review by the Board,* are appropriate. The proposed revision of Rule 5.03.2(4)(b)(ii) is as effective as the Federal regulations in satisfying the requirements of SMCRA, and we approve the amendment.

59. Rule 6.01.1; Blasters Training and Certification, General Requirements; [30 CFR 850.5]

Proposed revisions to Rule 6.01.1 include a change to the second paragraph, which defines ''certified blaster'' by correcting a typographical error in the reference to ''Rule 2.05.4(6)'' (*i.e.,* it is corrected to ''Rule 2.05.3(6)(a)''), and the deletion of language differentiating a ''certified blaster'' from a ''shotfirer.'' The deletion of the differentiations between a certified blaster and a shotfirer is appropriate. The proposed revisions to Rule 6.01.1 are as effective as the Federal regulations at 30 CFR 850.5 in satisfying the requirements of SMCRA. However, the definition of ''certified blaster'' in the second paragraph of Rule 6.01.1 is superfluous because it is substantively identical to the proposed revision of the definition of ''certified blaster'' in Rule 1.04(20.1).

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulation, we find that they are consistent with and no less effective than the corresponding Federal regulation; therefore, we approve the amendment.

C. Revisions to Colorado's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Rules 1.04(110.1), (110.1)(a), and (110.1)(b); Definitions, ''Replacement of Water Supply''; [30 CFR 701.5]

In 732 letters we sent Colorado on June 5, 1996, and April 4, 2008, we explained to the State that it was required to define ''Replacement of water supply.'' The proposed language at Rules 1.04(110.1), (110.1)(a), and (110.1)(b) is substantively identical to the counterpart Federal regulation at 30 CFR 701.5, *Replacement of water supply,* except the Colorado Rule adds a provision for a one-time payment of annual operation and maintenance costs to the water supply owner and a provision that allows a demonstration of the availability of a suitable alternative water source in lieu of actual replacement of the affected water supply if it was not needed for the premining land use and is not needed for the postmining land use. Both provisions require ''approval'' of the owner of the affected water supply, which protects the owner's water rights; therefore, the added provisions are not inconsistent with the Federal regulations and are in accordance with SMCRA. The proposed language is no less effective than the Federal regulations in satisfying the requirements of SMCRA; therefore, we approve the amendment.

2. Rule 1.04(111)(d); Definitions, ''Public Road''; [30 CFR 761.5]

Colorado proposes revisions to the definition for ''public road,'' as required by 30 CFR 906.16(h), *Required program amendments.* Proposed Rule 1.04(111)(d), the definition of ''public road,'' is consistent with the definition of a ''public road'' at 30 CFR 761.5, but is more inclusive than the Federal definition. The ''maintenance'' stipulations of the first and second criteria of Colorado's proposed definition, ''has been or will be . . . maintained with appropriated funds of the United States . . . [or] the state of

Colorado or any political subdivision thereof,'' are the same as criterion (b) of the Federal definition, ''is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction,'' except that Colorado's stipulation does not require that the road be maintained in a manner similar to other public roads of the same classification within the jurisdiction, which is more inclusive (and effective) than the Federal requirement, because the definition extends to all roads maintained with public funds regardless whether they are maintained in a manner similar to other public roads of the same classification within the jurisdiction, provided that such roads also meet the other criteria of the definition. Additionally, Colorado's definition does not include the criterion (c) of the Federal definition, which states, ''there is substantial (more than incidental) public use.'' The omission of this criterion makes the definition more inclusive than the Federal requirement, because the definition extends to all roads used by the public regardless of the frequency or significance of public use, if such roads meet all the criteria of the definition. The proposed language is no less effective than the Federal regulations in satisfying the requirements of SMCRA. We, therefore, approve the amendment.

During the comment period for the formal program amendment submittal dated April 11, 2011, the United States Forest Service (USFS) expressed concern with the possibility that the Division could attempt to exercise jurisdiction over National Forest System Roads that are managed by the USFS. OSMRE required the Division to modify its Statement of Basis, Purpose, and Specific Statutory Authority (SBPSSA) to clarify that the Division would not usurp the authority of the USFS by exercising jurisdiction over a National Forest Road System Road. Colorado amended Item No. 26 (statement for Rule 1.04(111)(d)) of the SBPSSA to clarify that the Division will not exercise jurisdiction over designated National Forest System Roads. The SBPSSA is incorporated into the Colorado Rules by reference.

3. Rule 2.03.7(2); Relationship to Areas Designated Unsuitable for Mining; [30 CFR 778.16(b), 762.13]

In response to Item J. of OSMRE's April 2, 2001, 732 letter, Colorado proposed revisions to Rule 2.03.7(2) addressing the status of unsuitability claims under the minimum requirements for legal, financial, compliance, and related information associated with permit applications. On January 15, 2008, in *National Mining Association* v. *Kempthorne,* 512 F.3d 702 (D.C. Cir.), the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision to uphold the VER and associated rules that OSMRE published on December 17, 1999 (64 FR 70766). Because the VER rules were challenged in Federal court on several fronts, we informed Colorado that it could defer responding to our April 2, 2001, letter pending the outcome of the litigation.

By letter dated May 20, 2013, OSMRE notified the Division that Colorado's proposed revisions to Rule 2.03.7(2) regarding the status of unsuitability claims was less effective than the counterpart Federal regulations at 30 CFR 778.16(b).

Specifically, Colorado proposed to revise Rule 2.03.7(2) to require that a permit application that is requesting a determination of valid existing rights for operations on lands that are designated, or under study for designation as, unsuitable for mining must contain the information required by proposed new Rule 1.07, Procedures for determining valid existing rights. The proposed changes conflicted with the Federal regulations at 30 CFR 761.5, Valid existing rights, which specify that possession of valid existing rights only confers an exception from the prohibitions of 30 CFR 761.11 and 30 U.S.C. 1272(e), which do not include lands that are designated, or under study for designation as, unsuitable for mining. The proposed change also deleted the requirement in the existing rule that an application must contain information to support an assertion, if made, that the applicant made a substantial legal and financial commitment prior to January 4, 1977 in surface coal mining operations on those lands that are designated, or under study for designation as, unsuitable for mining, which conflicted with the Federal regulations at 30 CFR 778.16(b), which requires such information to be contained in a permit application. It was further noted that existing Rule 2.03.7(2) conflicts with Rule 7.02, Applicability (of Rule 7—Designating Areas Unsuitable for Surface Coal Mining), as well as the Federal regulations at 30 CFR 773.15(c)(1), *Written findings for permit application approval,* and 30 CFR 762.13, *Land exempt from designation as unsuitable for surface coal mining operations,* because it implies that the ''substantial legal and financial commitment'' exemption applies to ''lands designated . . . as unsuitable for surface coal mining operations.'' The Federal regulations only allow the exemption for lands under study or administrative proceedings for designation as unsuitable for surface coal mining operations.

Colorado now proposes language at proposed Rule 2.03.7(2) that a permit application shall contain information supporting the assertion that the applicant has made substantial legal and financial commitments, in relation to the operation for which he or she is applying for a permit, prior to January 4, 1977, if an applicant claims the exemption described in Rule 7.02(3), *Designating areas unsuitable for surface coal mining, Applicability.* The proposed change appropriately requires information on substantial legal and financial commitments in a permit application and appropriately references Rule 7.02(3), which specifies that the requirements of Rule 7, *Designating Areas Unsuitable for Surface Coal Mining,* shall not apply to lands where substantial legal and financial commitments in such operations were in existence prior to January 4, 1977 and which is substantively identical to the Federal regulations at 30 CFR 762.13(c). We, therefore, approve the amendment.

Additionally, Colorado proposes language at Rule 2.03.7(2) stating that, ''if the applicant has previously obtained a finding of the Secretary of the Interior or the Division Director acknowledging valid existing rights, or is in the process of applying for a valid existing rights determination on Federal lands, the disposition of those proceedings shall be included in the application''. There is no such requirement in the corresponding Federal regulations; however, the proposed requirement to include such valid existing rights information in a permit application does not conflict with the Federal regulations and does not render Colorado's Coal Program less effective than the Federal Program. Accordingly, we approve the amendment.

4. Rules 4.05.15(1) and (2); Performance Standards, Hydrologic Balance, Water Rights and Replacement; [30 CFR 816.41(h), 30 CFR 817.41(j), and SMCRA Section 720(a)(2)]

Colorado was advised that it is required to revise Rule 4.05.15(2) in 732 letters that we sent the State on June 5, 1996, and April 4, 2008. Under the Federal regulations, the performance standards for replacement of water supplies adversely affected by mining activities are different for surface mining activities and for underground mining activities; however, under Rules 4.05.15(1) and 4.05.15(2), the standards

are applicable to both surface mining activities and underground mining activities. Thus, Colorado's standards must be consistent with both the Federal standards for surface mining activities at 30 CFR 816.41(h) and the Federal standards for underground mining activities at 30 CFR 817.41(j).

Rule 4.05.15(1) requires replacement of any water supply that has been adversely impacted by surface or underground mining activities and is consistent with the Federal performance standard at 30 CFR 816.41(h) for surface mining activities. Colorado's Rule 4.05.15(1) uses the term ''owner of a vested water right'' in place of ''owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source,'' which is used in the Federal regulation. The use of water and water rights are governed by the State under the Colorado Constitution and State Law, which are based on the ''appropriation doctrine.'' Under the appropriation doctrine, a water right is independent of land ownership. Therefore, the use of the term, ''owner of a vested water right,'' is appropriate within Colorado's rules and is not inconsistent with the Federal regulations.

Additionally, Colorado Rule 4.05.15(1) uses the phrase ''water supply . . . which is proximately injured as a result of the mining activities'' in place of ''water supply [that] has been adversely impacted by contamination, diminution, or interruption proximately resulting from the . . . mining activities,'' which is used in the Federal regulation; the core difference being that ''injured'' replaces ''adversely impacted by contamination, diminution, or interruption.'' Although broader in scope, an ''injured'' water supply includes ''contamination, diminution, or interruption'' of a water supply; therefore, the use of the term, ''injured'' with respect to a water supply is appropriate within Colorado's Rules and is consistent with the Federal regulations.

The added requirement that an operator must replace the ''water supply . . . in a manner consistent with applicable State law'' is appropriate because water rights are governed by the State under Colorado Law.

Colorado's rule also requires an operator to replace the ''water supply . . . as described in Rule 2.04.7(3).'' Rule 2.04.7(3) contains the requirements for ''Alternative Water Supply Information'' that must be contained in a permit application, including, among other things, ''a description of . . . alternative sources of water supply . . . of a quality and quantity so as to meet the requirements for which the water has normally been used.'' The Federal regulations have no counterpart requirement to replace a water supply as described in the permit application; however, this requirement is not inconsistent with the Federal regulations.

Rule 4.05.15(2) requires replacement of drinking, domestic, or residential water supplies adversely affected by surface and underground mining activities and is substantively identical to the Federal performance standard at 30 CFR 817.41(j) for underground mining activities with the following exception: The Federal performance standard at 30 CFR 817.41(j) limits the applicability of the standard to ''mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.'' Rule 4.05.15(2) does not contain any limitation to the applicability of the standard. The omission of the limitation on applicability is not inconsistent with the Federal regulations.

The proposed revision of Rule 4.05.15(1) and the addition of proposed Rule 4.05.15(2) is consistent with the Federal regulations at 30 CFR 816.41(h) and 817.41(j) and in accordance with section 720(a)(2) of SMCRA. Rules 4.05.15(1) and 4.05.15(2) are as effective as the Federal regulations in satisfying the requirements of SMCRA. We, therefore, approve the proposed amendment.

D. Revisions to Colorado's Rules With No Corresponding Federal Regulations

1. Rules 2.04.13(1) and (3); Annual Reclamation Report

Colorado's rules requiring permit holders to submit Annual Reclamation Reports to the Division are unique to Colorado. Although coal mining permits under Federal programs nearly always include the same requirement for an annual report, they are listed as permit conditions that the coal operator must meet. There are no Federal regulations specifically requiring an operator to submit an annual reclamation report.

Colorado proposes to revise Rule 2.04.13(1) to specify that data is to be included in the annual reclamation reports that must be submitted to Colorado by coal operators. The removal of Colorado's reference to ''text'' in this rule is appropriate because it mentions that ''discussions'' of applicable topics must be included in the same sentence. Therefore, ''text'' can be construed to be redundant.

Colorado is proposing to add Rule 2.04.13(3) to require operators of underground mines to include, in the annual report, a map showing the current location and extent of underground workings. Colorado explains that this rule is necessary to ensure that mining is occurring as planned for the projected impacts of subsidence, to better analyze ground water monitoring and subsidence data, and to ensure compliance with Colorado's public notice requirements. For certain mines, when no revisions are requested, it can take as long as five years before the Division receives this information with a renewal application, as part of the information required by Rule 4.20.1(3).

Colorado's reference to Rule 2.07.5(1)(b), which outlines information in permit applications, which may be declared confidential because it pertains to the quantity of the coal or stripping ratios, or the analysis of the chemical and physical properties of coal to be mined, is appropriate.

Colorado's proposal to add specificity to their rules by including the proposed requirements in Rules 2.01.13(1) and (3) regarding the submission of Annual Reclamation Reports does not conflict with the Federal regulations and does not render Colorado's coal program less effective than the Federal program. We, therefore, approve the amendment.

2. Rules 2.07.6(2)(e) and (e)(iii); Criteria for Review of Permit Applications for Permit Approval or Denial—Criteria for Permit Approval or Denial

Colorado proposes to revise Rule 2.07.6(2)(e) by deleting the introductory language of paragraph (e) (*i.e.,* ''Subject to valid rights existing as of August 3, 1977, and with the further exception of those surface coal mining operations which were in existence on August 3, 1977''); deleting paragraph (e)(iii) (*i.e.,* ''A permit for the operation shall not be issued unless jointly approved by all affected agencies with jurisdiction over the park or historic site.''); redesignating paragraphs (e)(i) and (ii) as Rule 2.07.6(2)(d)(vi); and adjusting the introductory phrase of Rule 2.07.6(2)(e)(i) to be consistent with the introductory language of Rule 2.07.6(2)(d). Rules 2.07.6(2)(f) through (o) are renumbered to accommodate this redesignation of paragraph (e).

The deletion of Rule 2.07.6(2)(e)(iii) is appropriate because it is redundant of the requirement in Rule 2.07.6(2)(d)(vi) that the Division or Board shall not approve any application, unless it finds that ''the affected area is . . . not within

. . . any lands where the proposed operations would adversely affect any publicly owned park or any place listed on or those places eligible for listing, as determined by the SHPO, on the National Register of Historic Places, unless approved jointly by the Board and the Federal, State, or local agency with jurisdiction over the park or place.'' The proposed deletion of Rules 2.07.6(e) and (e)(iii) does not make Colorado's Rules less effective than the Federal regulations, and we approve the amendment.

E. Removal of Required Amendments

1. Required Amendment at 30 CFR 906.16(f); Design Criteria for Roads Variance

As explained in Section III.B.40. of this document, Colorado proposes revisions to Rules 4.03.1, 4.03.2, and 4.03.3, as required by 30 CFR 906.16(f), *Required program amendments.* The proposed revisions to Rules 4.03.1, 4.03.2, and 4.03.3 are consistent with the Federal counterpart regulation at 30 CFR 816.150(c). Colorado proposes to delete the general provision allowing alternative design criteria to clarify that the Division would not approve alternatives to all of the access road design and construction criteria presented in Rules 4.03.1, 4.03.2, and 4.03.3, as is implied by paragraph (e) of the General Requirements for haul roads and access roads. The proposed revision also adds provisions for use of alternative design criteria and specifications for road grades, such as ''vertical alignment'', of haul roads, access roads, and light-use roads. With the addition of these provisions, the existing rules specify, for haul roads, access roads, and light-use roads, whether the Division may approve alternatives to design and construction criteria, thus rendering paragraph (e) redundant and unclear. The proposed language is consistent with and no less effective than the Federal regulations in satisfying the requirements of SMCRA.

2. Required Amendment at 30 CFR 906.16(h); Design Criteria for Roads Variance

As explained in Section III.C.2. of this document, Colorado proposes revisions to the definition for ''public road,'' as required by 30 CFR 906.16(h), *Required program amendments.* Proposed Rule 1.04(111)(d), the definition of ''public road,'' is consistent with the definition of a ''public road'' at 30 CFR 761.5, but is more inclusive than the Federal definition. The ''maintenance'' stipulations of the first and second criteria of Colorado's proposed definition, ''has been or will be . . . maintained with appropriated funds of the United States . . . [or] the state of Colorado or any political subdivision thereof,'' are the same as criterion (b) of the Federal definition, ''is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction,'' except that Colorado's stipulation does not require that the road be maintained in a manner similar to other public roads of the same classification within the jurisdiction, which is more inclusive (and effective) than the Federal requirement because the definition extends to all roads maintained with public funds regardless whether they are maintained in a manner similar to other public roads of the same classification within the jurisdiction, provided that such roads also meet the other criteria of the definition). Additionally, Colorado's definition does not include the criterion (c) of the Federal definition, ''there is substantial (more than incidental) public use.'' The omission of this criterion makes the definition more inclusive than the Federal requirement because the definition extends to all roads used by the public, regardless of the frequency or significance of public use, if such roads meet all the criteria of the definition. The proposed language is no less effective than the Federal regulations in satisfying the requirements of SMCRA.

IV. Summary and Disposition of Comments

Public Comments

We announced receipt of the proposed amendment in the January 22, 2015, **Federal Register** (80 FR 3190). 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 (Administrative Record Document ID No. OSMRE–2011–0002–0001). We received no public comments and, because no one requested an opportunity to speak at a public hearing, we held no hearing.

Federal Agency Comments

On April 19, 2016, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal and State agencies with an actual or potential interest in the Colorado program, including the USFS, U.S. Fish and Wildlife Service, Environmental Protection Agency (EPA), Advisory Council on Historic Preservation (ACHP), and the Colorado Office of Archaeology and Historic Preservation.

During the public comment period for the formal program amendment submittal of June 21, 2011, USFS expressed concern with the possibility that the Division could attempt to exercise jurisdiction over National Forest System Roads that USFS manages. As a result of those comments, we identified concerns regarding Colorado's jurisdiction over public roads, particularly National Forest System Roads. We notified Colorado of these concerns by letter dated September 19, 2011 (Administrative Record No. OSMRE–2011–0002–0008).

OSMRE required the Division to modify its Statement of Basis, Purpose, and Specific Statutory Authority (SBPSSA) to clarify that the Division would not assume the authority of the USFS by exercising jurisdiction over a National Forest Road System Road. Colorado amended Item No. 26, statement for Rule 1.04(111)(d), *Definitions: Public Road,* of the SBPSSA to clarify that the Division will not exercise jurisdiction over designated National Forest System Roads. The SBPSSA is incorporated into the Colorado rules by reference.

State Historical Preservation Officer (SHPO) and the AHCP

Under 30 CFR 732.17(h)(4), we are required to request comments from the Colorado SHPO and the ACHP on amendments that may have an effect on historic properties. On April 19, 2016, we requested comments on the amendment. The SHPO and ACHP did not provide any comments when solicited.

EPA Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get concurrence 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.*). Because the amendments do not relate to air or water quality standards, concurrence is not required. However, consistent with 30 CFR 732.17(h)(11)(i), we did request comment from EPA on April 19, 2016. The EPA did not respond to our request.

V. OSMRE's Decision

Based on the above findings, we are approving Colorado's revised amendment submission dated October 1, 2014. To implement this decision, we are amending the Federal regulations at 30 CFR part 906, which codify decisions concerning the Colorado program. In

accordance with the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and satisfying its purposes. SMCRA requires consistency of State and Federal standards.

Effect of OSMRE's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA, unless the Secretary has approved the State program. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program must be submitted to OSMRE for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSMRE. In the oversight of the Colorado program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Colorado to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Colorado drafted.

Executive Order 13132—Federalism

This rule is not a ''[p]olicy that [has] Federalism implications'' as defined by Section 1(a) of Executive Order 13132 because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Instead, this rulemaking approves an amendment to the Colorado program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind, as set forth in Sections 2 and 3 of the Executive Order, and with the principles of cooperative Federalism, which are set forth in SMCRA. *See, e.g.,* 30 U.S.C. 1201(f). As such, pursuant to Section 503(a) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is ''in accordance with'' the requirements of SMCRA and ''consistent with'' the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Colorado program that does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus

standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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, which is the subject of this rule, is based upon corresponding 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. 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 corresponding 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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 15, 2019.

Glenda H. Owens,

Deputy Director, Exercising the Authority of the Director.

Editorial note: This document was received for publication by the Office of the Federal Register on August 26, 2019.

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 906.15 is amended in the table by adding an 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
*	*	*
April 8, 2011	September 3, 2019	2 CCR 407–2, Rules 1.04 (11.1), (20.1), (30.1), (39.1), (70.1), (71)(c), (71)(k), (71.2), (77), (79), (81), (83.1), (110.1), (110.1)(a), (110.1)(b), (111)(d), (118.1), (118.1)(a) through (d), (132)(c), (141), (146), (149), (149)(a)(i), (149)(a)(ii)(A), (149)(a)(ii)(B), (149)(a)(ii)(B)(I) through (149)(a)(ii)(B)(IV), (149)(b), (149)(b)(i) through (b)(iii), (149.1), (149.1)(a), (149.1)(b)(i) through (b)(v)(C), (149.2), (149.2)(a) and (b); Rules 1.07(1), (1)(a), (1)(a)(i) through (a)(ix), (1)(b), (1)(b)(i) through (iii); (1)(c), (1)(d), (d)(i) through (iii), (2), (2)(a) through (2)(d), (3), (3)(a), (3)(a)(i) through (3)(a)(iii)(A), (3)(a)(iii)(B) through (a)(iii)(D), (3)(a)(iv) through (3)(a)(vii), (3)(b), (3)(b)(i) and (ii), (3)(c), (4), (4)(a) through (4)(c), (4)(c)(i), (4)(c)(ii), (4)(d), (4)(e), (e)(i), (e)(ii), (5), and (6); Rule 2.01.3; Rules 2.02.2(1), .3, and .3(1)(g); Rules 2.02.4, .4(3)(d), and .5; Rules 2.03.3(10), .4, .4(2) through (2)(d), .4(3), .4(3)(a), (3)(a)(i), (3)(a)(ii), (3)(a)(iii), (3)(a)(iv), (3)(b), .4(4), .4(4)(a) through (c), .4(6)(b), and .4(8), .4(10), .4(11), (11)(a), (11)(b), .4(12)(a), (b)(i), (b)(ii), .5(1)(a), (1)(a)(i), (1)(a)(ii), .5(2)(a) through (2)(d), .5(3)(a), (3)(a)(i) through (3)(a)(iii), .5(3)(b), and (3)(c), and .7(2); Rules 2.04.5(1)(a), (1)(b), .12(2)(g); .13(1) and .13(3); Rule 2.05.4(2)(c); Rules 2.05.6(6)(a), (6)(a)(i), (6)(a)(ii), (6)(a)(ii)(A), (6)(a)(ii)(B), (6)(a)(iii), (6)(a)(iv), (6)(b), (6)(b)(i), (6)(b)(i)(A), (6)(b)(i)(C), (6)(b)(ii), (6)(b)(iii), (6)(b)(iii)(A), (6)(b)(iii)(B), (6)(c)(i)(E), (F), and (G), (6)(c)(ii), (6)(d)(i) and (ii), (6)(e)(i)(F) and (F)(III), (6)(e)(ii) and (ii)(A) through (C), (6)(e)(iii), (6)(e)(iv), (6)(f)(iii), (6)(f)(iii)(A), (C), and (C)(V), (6)(f)(iv), (6)(f)(iv)(A), (D), and (E), (6)(f)(v) and (v)(A), and (6)(f)(vi); Rules 2.06.6(2)(a)(i), (3), (4), and (4)(b);

Original amendment submission date	Date of final publication	Citation/description
		Rules 2.07.1(4), .1(5), .3(2), .3(3), .4(2)(e) through (e)(ii), .4(2)(f), .4(3)(d)(iv), .4(3)(f), .6(1)(b) through (b)(ii), .6(1)(c) through (f), .6(1)(g)(i), (g)(i)(A), (g)(i)(B), (g)(ii), (g)(ii)(A), (g)(ii)(B), (g)(ii)(C), (g)(ii)(C)(I), (g)(ii)(C)(II), (g)(ii)(D), (g)(iii), (g)(iii)(A), (g)(iii)(C), and (g)(iii)(D), .6(2)(d)(iii)(A), .6(2)(d)(iii)(D)(II) and (III), .6(2)(d)(v) and (vi), .6(2)(e), (e)(i), (e)(ii), (e)(iii), .6(2)(g), .6(2)(p) and (q), .8(1) and (1)(a), .8(1)(b) through (e), .8(2)(a) through (g), .8(3)(a) through (d), .9, .9(1)(a) through (d), .9(2), .9(3), .9(3)(a), .9(3)(b), .9(4), .9(5)(a) and (b), .9(6) .9(7), .9(8), .10, .10(1), and .10(2); Rules 2.08.4(6)(b)(i) and .5(1)(b); Rules 2.11, 2.11.1(1), .1(1) through (3), .2, .2(1), .2(1)(a), .2(1)(b), .2(2) through (5), .3, .3(1)(a), .3(1)(b), .3(2), .3(3)(a) through (c), .3(3)(d) through (d)(iii), and .4(1) through (6); Rule 3.03.2(1); Rules 4.03.1, .2, and .3; Rules 4.05.15(1) and (2); Rules 4.06.4(2)(a) and (3); Rules 4.07.3, .3(1), .3(1)(a), .3(1)(b), .3(1)(b)(i), .3(1)(b)(ii), .3(1)(b)(ii)(A), and .3(1)(b)(ii)(B); Rules 4.08.4(4) and (8); Rules 4.14.2(5), .4(1), .4(1)(a), .4(1)(b), 4.14.5(1), .5(1)(a), and .5(1)(b); Rules 4.15.1(2)(b), .7(2)(d), .7(2)(d)(ii), .7(5), .7(5)(e) and (g), .8(1) through (9), .9, .11(1), .11(2)(c) and (d), .11(3)(b)(ii) and .11(3)(c); Rule 4.16.3(6); Rules 4.20.3(1) through (4), .4(1) through (5); Rule 4.25.5(3)(d); Rules 5.03.2(4)(b)(ii) and .2(5)(e); Rules 5.05, 5.05.1, .2, .3, .4, .4(1), .4(2), .4(2)(a), .4(2)(b), .5, and .5(1) through (4); Rules 5.06 and 5.06.1, .2, .2(1) through (3), .3, .3(1), .3(2), .3(2)(a) and (b), .3(3), .4, and .4(2) through (4); Rules 6.01.1 and .3(3); Rules 7.06.2(1) and .3(1); Also all minor, editorial, and codification changes.

§ 906.16 [Amended]

■ 3. Section 906.16 is amended by removing and reserving paragraphs (f) and (h).

[FR Doc. 2019–18697 Filed 8–30–19; 8:45 am]

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