

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

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

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Telephone: (303) 672-5524.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Colorado Program**

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.11, 906.15, 906.16, and 906.30.

**II. Proposed Amendment**

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

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

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

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

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

**III. Director's Findings**

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with one exception and additional requirement, that the proposed program amendment submitted by Colorado on July 12, 1995, and as supplemented with additional explanatory information on September 26, 1995, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception and additional requirement, the proposed amendment.

**1. Nonsubstantive Revisions to Colorado's Rules**

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

Rule 2.03.7(1) (30 CFR 778.16(a)), concerning lands unsuitable for surface coal mining operations, to correctly cite the reference to 30 CFR part 769;

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

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

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

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

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

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

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

Colorado proposed revisions to the following rules that are substantive in nature and contain language that is

substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

Rule 1.04(80) (30 CFR 700.5), concerning the definition of "operator,"

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

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

Because these proposed Colorado rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

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

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

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

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