

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

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

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

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

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

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

the extent technologically and economically feasible.

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

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

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

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

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

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

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

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

### IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

#### 1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

#### 2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Colorado program.

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

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

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

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