

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued
 [Amendment 380—Effective Date, January 6, 1994]

From	To	MEA	MAA
§ 95.6420 Hawaii VOR Federal Airway 20 is Amended to Read in Part			
Julle, HI FIX	Jorda, HI FIX	5000	
Jorda, HI FIX	Crisl, HI FIX	10000	
From	To	MEA	MAA
§ 95.7133 Jet Route No. 133 is Amended to Read in Part			
Biorka Island, AK VORTAC	Humpy, AK FIX	24000	45000
Humpy, AK FIX	Hinchinbrook, AK NDB	18000	45000
§ 95.7237 Jet Route No. 237 is Amended to Delete			
Shemya, AK VORTAC	Amchitka/Dcmsnd, AK VORTAC	18000	45000
Amchitka/Dcmsnd, AK VORTAC	Adak (Navy), AK NDB	18000	45000
§ 95.7238 Jet Route No. 238 is Amended to Delete			
Amchitka/Dcmsnd, AK VORTAC	Fries, AK FIX	18000	45000
Fries, AK FIX	Adak (Navy), AK NDB	18000	45000

[FR Doc. 93-30834 Filed 12-16-93; 8:45 am]
 BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27541; Amdt. No. 1576]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1

CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the

criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only those specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists

for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Standard Instrument Approaches, Incorporation by reference, Navigation (air).

Issued in Washington, DC on December 3, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the

Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
11/16/93	CA	San Francisco	San Francisco Intl	3/6355	VOR-B AMDT 5A...
11/18/93	AK	Ketchikan	Ketchikan Intl	3/6269	ILS/DME-1 RWY 11 AMDT 5A...
11/18/93	AK	Ketchikan	Ketchikan Intl	3/6270	NDB/DME-A AMDT 6...
11/18/93	CO	Rifle	Garfield County Regional	3/6271	LOC/DME-A AMDT 5...
11/18/93	NJ	Linden	Linden	3/6260	VOR-C, ORIG A...
11/19/93	HI	Kahului	Kahului	3/6285	NDB/DME RWY 2 AMDT 1...
11/26/93	CT	Hartford	Hartford-Brainard	3/6353	VOR-A AMD 9...
11/26/93	CT	Hartford	Hartford-Brainard	3/6354	LDA RWY 2 AMDT 1...
12/01/93	SC	Columbia	Columbia Metropolitan	3/6412	ILS RWY 29 AMDT 3A...
12/01/93	SC	Columbia	Columbia Metropolitan	3/6416	ILS RWY 11 AMDT 13...
12/02/93	SC	Charleston	Charleston AFB/Intl ..	3/6440	ILS RWY 15 AMDT 20...
12/03/93	MO	Kansas City	Kansas City Intl	3/6457	ILS RWY 19R AMDT 8...

[FR Doc. 93-30836 Filed 12-16-93; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27540; Amdt. No. 1575]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to

promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the

affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on December 3, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TANCAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*** * * Effective March 3, 1994**

Courtland, AL, Industrial Airpark, VOR RWY 13, Orig.
Harrison, AR, Boone County, LOC/DME RWY 36, Amdt. 7
Harrison, AR, Boone County, NDB-B, Amdt. 1
Mountain View, AR, Harry E. Wilcox Memorial Field, NDB-A, Amdt. 1
Warren, AR, Warren Muni, VOR/DME-A, Amdt. 4
Fort Huachuca/Sierra Vista, AZ, Libby AAF/Sierra Vista Muni, RADAR-2, Orig.
San Diego, CA, San Diego Intl-Lindbergh Fld, ILS RWY 9, Amdt. 1
Tallahassee, FL, Tallahassee Regional, ILS RWY 27, Amdt. 4
Holdenville, OK, Holdenville, Muni, NDB RWY 17, Amdt. 3
Idabel, OK, Idabel, NDB RWY 17, Amdt. 2
Seminole, OK, Seminole Muni, NDB RWY 16, Amdt. 2
Carlsbad, NM, Cavern City Air TRML, VOR RWY 32L, Amdt. 5
Carlsbad, NM, Cavern City Air TRML, ILS RWY 3, Amdt. 4
Carlsbad, NM, Cavern City Air TRML, VOR/DME RNAV RWY 14R, Amdt. 2
Bay City, TX, Bay City Muni, VOR/DME-A, Amdt. 4
Bay City, TX, Bay City Muni, NDB RWY 13, Amdt. 3
Clarendon, TX, Clarendon Muni, NDB RWY 1, Amdt. 2

Highgate, VT, Franklin County State, VOR/DME RWY 19, Amdt. 1
 South Hill, VA, Mecklenburg-Brunswick Regional, NDB RWY 1, Amdt. 1
 Burlington, WI, Burlington Muni, VOR-A, Amdt. 1
 Burlington, WI, Burlington Muni, VOR RWY 29, Amdt. 7

***** Effective February 3, 1994**

Sioux Center, IA, Sioux Center Muni, NDB RWY 17, Amdt. 4

***** Effective January 6, 1994**

Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, ILS RWY 9L, Amdt. 17
 Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, ILS RWY 27R, Amdt. 5
 Adel, Ga, Cook County, VOR/DME-A, Orig.
 Chicago, IL, Lansing Muni, VOR-A, Amdt. 5
 Le Mars, IA, Le Mars Muni, VOR/DME RWY 36, Amdt. 1
 Le Mars, IA, Le Mars Muni, NDB RWY 18, Amdt. 9
 Oscoda, MI, Oscoda-Wurtsmith, VOR RWY 6, Orig.
 Oscoda, MI, Oscoda-Wurtsmith, ILS/DME RWY 24, Orig.
 Caledonia, MN, Houston County, NDB RWY 31, Amdt. 1, CANCELLED
 Cook, MN, Cook Muni, NDB RWY 31, Amdt. 1
 Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, VOR RWY 13, Orig.
 Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, VOR RWY 17, Amdt. 6B, CANCELLED
 Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, VOR/DME RWY 31, Amdt. 3B, CANCELLED
 Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, VOR RWY 35, Amdt. 9
 Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, NDB RWY 31, Orig.
 Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, ILS RWY 31, Orig.
 Caldwell, OH, Noble county, VOR-A, Amdt. 1

***** Effective December 3, 1993**

Kansas City, MO, Kansas City Intl, ILS RWY 19R, Amdt. 9

***** Effective December 1, 1993**

Las Vegas, NV, McCarran Intl, ILS RWY 25L, Amdt. 2

***** Effective November 22, 1993**

Moberly, MO, Omar N Bradley, VOR/DME-A, Amdt. 3
 Moberly, MO, Omar N Bradley, NDB RWY 13, Amdt. 4
 Moberly, MO, Omar N Bradley, NDB RWY 31, Amdt. 4

***** Effective November 19, 1993**

Columbus-West Point/Starkville, MS, Golden Triangle Regional, LOC/DME BC, RWY 36, Amdt. 6
 Atlanta, TX, Atlanta Muni, NDB RWY 5, Amdt. 2
 Jackson, WY, Jackson Hole, VOR/DME RWY 36, Amdt. 4

* * * * *

Note: The FAA published an Amendment in Docket No. 27530, Amdt. No. 1573 to Part 97 of the Federal Aviation Regulations (Vol.

58 FR, No. 228, Page 63065; dated Tuesday November 30, 1993) under Section 97.27 Effective 6 JAN 94, which is hereby amended as follows:

Louisville, KY, Bowman Field, NDB RWY 32, Amdt. 15 is hereby rescinded.
 Amendment 14 remains in effect.

[FR Doc. 93-30837 Filed 13-16-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, an amendment to the New Mexico permanent regulatory program (New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to New Mexico's existing regulations pertaining to the definition of "owned or controlled and owns or controls"; designation of lands unsuitable for coal mining; permit information requirements; protection of the hydrologic balance; reclamation plans for ponds, impoundments, banks, dams, and embankments; transportation facilities; subsidence control; support facilities; review of permit applications; criteria for permit approval or denial; improvidently issued permits; permit conditions; performance standards for roads used in coal exploration; permit requirements for coal exploration; coal processing waste dams and embankments; protection of threatened and endangered species; revegetation; roads; and cessation orders. The amendment also repeals the statutory language pertaining to the 2-acre exemption. The amendment revises the New Mexico program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 17, 1993.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
 II. Proposed Amendment
 III. Director's Findings

IV. Summary and Disposition of Comments
 V. Director's Decision
 VI. Procedural Determinations

I. Background on the New Mexico Program

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

II. Proposed Amendment

By letter dated January 16, 1991 (Administrative Record No. NM-623), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to letters dated May 11 and November 1, 1989, and February 7 and June 22, 1990, that OSM sent to New Mexico in accordance with 30 CFR 732.17(d) (Administrative Record Nos. NM-494, NM-550, NM-563, and NM-596).

The rules that New Mexico proposed to revise were: Coal Surface Mining Commission (CSMC) Rule 80-1-1-5, definition of "owned or controlled and owns or controls"; CSMC Rules 80-1-7-13 and 7-14, permit information requirements; CSMC Rule 80-1-9-25, reclamation plans for ponds, impoundments, banks, dams, and embankments; CSMC Rule 80-1-9-37, transportation facilities; CSMC Rules 80-1-9-39, 20-121, and 20-124, subsidence control; CSMC Rule 80-1-9-40, support facilities; CSMC Rule 80-1-11-17, review of permit applications; CSMC Rule 80-1-11-19, criteria for permit approval or denial; CSMC Rules 80-1-11-20 and 11-24, improvidently issued permits; CSMC Rule 80-1-11-29, permit conditions; CSMC Rules 80-1-12-10 and 34-1 through 34-10, exemption for coal extraction incidental to the extraction of other minerals; CSMC Rule 80-1-19-15, performance standards for roads used in coal exploration; CSMC Rule 80-1-19-17, permit requirements for coal exploration; CSMC Rule 80-1-20-93, coal processing waste dams and embankments; CSMC Rules 80-1-20-116 and 20-117, revegetation; CSMC Rules 80-1-20-150 and 20-151, roads; and CSMC Rule 80-1-30-11, cessation orders.

OSM published a notice in the January 29, 1991, *Federal Register* (56 FR 3234) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-626). The public comment period ended on February 28, 1991.

By letters dated February 6 and March 27, 1991, New Mexico submitted, on its own initiative, proposed revisions to CSMC Rule 80-1-20-97(b) and (c) pertaining to the protection of threatened and endangered species (Administrative Record Nos. NM-627 and NM-635) and requested that these proposed revisions be included as part of its January 16, 1991 proposed amendment.

During its review of the amendment, OSM identified concerns relating to CSMC Rule 80-1-9-25(c), reclamation plans for ponds impoundments, banks, dams, and embankments; CSMC Rule 80-1-9-37, transportation facilities; CSMC Rules 80-1-9-39 (b), and (c), 20-121(a), and 20-124, subsidence control; CSMC Rule 80-1-11-29(a), permit conditions; CSMC Rule 80-1-19-15(c)(4), performance standards for roads used in coal exploration; CSMC Rule 80-1-20-93(e), coal processing waste dams and embankments; CSMC Rules 80-1-20-97(b) and (c), protection of threatened and endangered species; CSMC Rules 80-1-20-116 and 20-117, revegetation; CSMC Rule 80-1-20-150(d)(1), roads; CSMC Rule 80-1-30-11(a), cessation orders; and CSMC Rule 80-1-34-6(a)(2), exemption for coal extraction incidental to the extraction of other minerals. OSM notified New Mexico of the concerns by letter dated April 15, 1991 (Administrative Record No. NM-636).

New Mexico responded in a letter dated July 22, 1991, by submitting a revised amendment (Administrative Record No. NM-645). The regulations that New Mexico proposed to further revise were: CSMC Rules 80-1-9-25(b) and (e), reclamation plans for coal processing waste dams and embankments; CSMC Rule 80-1-9-37, transportation facilities; CSMC Rules 80-1-9-39(b), (c), and (d), subsidence control; CSMC Rules 80-1-11-29(a) and (d), permit conditions; CSMC Rule 80-1-19-15(c), performance standards for roads used in coal exploration; CSMC Rules 80-1-20-97(b) and (c), protection of threatened and endangered species; CSMC Rules 80-1-20-116 and 20-117(c), revegetation; CSMC Rule 80-1-20-150 roads; CSMC Rule 80-1-30-11, cessation orders; and CSMC Rule 80-1-34-6, exemption for coal extraction incidental to the extraction of other

minerals. In addition, New Mexico submitted for the first time a proposed revision to CSMC Rule 80-1-9-21(c), pertaining to protection of the hydrologic balance.

OSM published a notice in the August 9, 1991, *Federal Register* (56 FR 37870) announcing receipt of the revised amendment and inviting public comment on its adequacy (Administrative Record No. NM-648). The public comment period ended August 26, 1991.

During its review of the revised amendment, OSM identified concerns relating to CSMC Rules 80-1-9-25(c) and (e), reclamation plans for coal processing waste dams and embankments; CSMC Rules 80-1-9-39(b) and (c), subsidence control; CSMC Rule 80-1-11-29, permit conditions; CSMC Rules 80-1-20-116 and 20-117, revegetation; CSMC Rule 80-1-20-150(c), roads; and CSMC Rules 80-1-30-11(b) through (1), cessation orders. OSM notified New Mexico of the concerns by letter dated November 19, 1991 (Administrative Record No. NM-668).

New Mexico responded in a letter dated September 1, 1992, by submitting a revised amendment (Administrative Record No. NM-685). The regulations that New Mexico proposed to further revise were: CSMC Rule 80-1-1-5, definition of "owned or controlled and owns or controls"; CSMC Rules 80-1-7-13 and 7-14, permit information requirements; CSMC Rule 80-1-9-21(c), protection of the hydrologic balance; CSMC Rules 80-1-9-25(b), (c), and (e), reclamation plans for ponds, impoundments, banks, dams, and embankments; CSMC Rule 80-1-9-37, transportation facilities; CSMC Rules 80-1-9-39(b), (c), and (d), 20-121, and 20-124, subsidence control; CSMC Rule 80-1-9-40, support facilities; CSMC Rules 80-1-11-17(c), (d), and (e), review of permit applications; CSMC Rule 80-1-11-19(i), criteria for permit approval of denial; CSMC Rules 80-1-11-20 and 11-24, improvidently issued permits; CSMC Rule 80-1-11-29(d), permit conditions; CSMC Rule 80-1-19-15(c), performance standards for roads used in coal exploration; CSMC Rule 80-1-19-17, permit requirements for coal exploration; CSMC Rule 80-1-20-93, coal processing waste dams and embankments; CSMC Rules 80-1-20-97(b) and (c), protection of threatened and endangered species; CSMC Rules 80-1-20-116 and 20-117, revegetation; CSMC Rules 80-1-20-150 and 20-151(a), (b), and (c), roads; and CSMC Rules 80-1-30-11(b) through (1), cessation orders. In this revised amendment, New Mexico also (1)

submitted for the first time proposed revisions to CSMC Rule 80-1-4-15(b), designation of lands unsuitable for coal mining, and CSMC Rule 80-1-20-91(c), coal processing waste dams and embankments; (2) advised OSM and the public of the deletion from the New Mexico Surface Mining Act, New Mexico Statutes Annotated (NMSA) 69-25A-31(B), concerning the 2-acre exemption, and (3) withdrew from further OSM consideration in this amendment CSMC Rules 80-1-12-10, 34-1, 34-2, 34-3, 34-4, 34-5, 34-6, 34-7, 34-8, 34-9, and 34-10, concerning the exemption for coal extraction incidental to the extraction of other minerals.

OSM published a notice in the October 28, 1992, *Federal Register* (57 FR 48764) announcing receipt of the revised amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-697). The public comment period closed November 12, 1992.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions and additional requirements, that the proposed amendment as submitted by New Mexico on January 16, 1991, and subsequently revised on February 6, March 27, and July 22, 1991, and September 1, 1992, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

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

New Mexico proposed revisions to the following regulations that are substantive in nature and contain language that is substantively identical to the corresponding Federal regulations (listed in parentheses): CSMC Rule 80-1-1-5 (30 CFR 773.5), definition of "owned or controlled and owns or controls"; CSMC Rules 80-1-7-13(a) through (i) and 7-14(a), (b), and (d) (30 CFR 778.13(a) through (i) and 778.14(a), (b), and (d)), permit information requirements; CSMC Rules 80-1-9-37(a), (b), and (d) (30 CFR 780.37(a)(1), (a)(4), and (a)(6), and 784.24(a)(4), and (a)(6)), transportation facilities; CSMC Rule 80-1-9-40 (30 CFR 780.38 and 784.30), support facilities; CSMC Rule 80-1-11-17(a) (30 CFR 773.15(e)), review of permit applications; CSMC Rules 80-1-11-20(a), (b)(1)(i), (b)(2), (c), (c)(1) through (c)(4), and 11-24 (30 CFR 773.20(a), (b)(1)(i), (b)(2), (c), (c)(1)

through (c)(4), and 773.21), improvidently issued permits; CSMC Rules 80-1-19-17(a) and (b) (30 CFR 772.14(a) and (b)), permit requirements for coal exploration; CSMC Rules 80-1-20-93(a) and (d) (30 CFR 816.84(b)(1) and (b)(2), and 817.84(b)(1) and (b)(2)), coal processing waste impounding structures; CSMC Rules 80-1-20-150(a)(2)(iii) and (g)(5) through (g)(7) (30 CFR 816.150(a)(2)(iii), (f)(3), (f)(5), (f)(6), and 817.150(a)(2)(iii), (f)(3), (f)(5), and (f)(6)), roads; CSMC Rules 80-1-20-151(a) and (c)(1) (30 CFR 816.151(a), (d)(1) and 817.151(a), (d)(1)), primary roads; CSMC Rules 80-1-30-11(b) and (l) and recodification of paragraph (c) through (k) (30 CFR 843.11(a)(2) and (g)), cessation orders.

Because these proposed New Mexico rules are substantively identical to the corresponding Federal regulations, the Director finds that they are no less effective than the corresponding Federal regulations and approves them.

2. CSMC Rule 80-1-4-15(b)(2), Notification Requirements for Designating Lands Unsuitable for Surface Coal Mining Operations

At 30 CFR 931.16(c), the Director previously required New Mexico to revise CSMC Rule 80-1-4-15(b)(1) to require publication in the New Mexico State Register of a public notice of the receipt of a petition to designate lands unsuitable for surface coal mining operations (56 FR 67520, December 31, 1991). New Mexico did not propose to revise CSMC Rule 80-1-4-15(b)(1) in this rulemaking.

The Federal regulations at 30 CFR 764.15(b)(1) require, in part, that the regulatory authority shall, by notice in any official State register of public notices, promptly notify the general public of the receipt of a petition to designate lands unsuitable for surface coal mining operations. Neither New Mexico's existing rules nor its proposed rule at CSMC Rule 80-1-4-15(b)(2) require publication of a notice in the New Mexico State Register upon initial receipt of a petition to designate lands unsuitable for surface coal mining operations. Therefore, the required amendment at 30 CFR 931.16(c) has not been satisfied and remains outstanding.

New Mexico proposed to revise CSMC Rule 80-1-4-15(b)(2) to require New Mexico to notify the general public of the receipt of a complete petition to designate lands unsuitable for mining by the publication of a notice in the New Mexico State Register. The corresponding Federal regulation at 30 CFR 764.15(b)(2) also requires, in part, that after the determination that a petition is complete the regulatory

authority shall, by notice in any official State register of public notices, request submissions from the general public of relevant information pertaining to such a petition. The Director finds that New Mexico's proposed revision to CSMC Rule 80-1-4-15(b)(2) is no less effective than the Federal requirements at 30 CFR 764.15(b)(2) and approves it.

3. CSMC Rule 80-1-7-13(j), Identification of Interests in Permit Applications

New Mexico proposed at CSMC Rule 80-1-7-13(j) that an applicant for a mining permit submit the identification of interests and compliance information required by CSMC Rules 80-1-7-13 and 80-1-7-14 in any format prescribed by the Director that is approved by OSM. The corresponding Federal regulation at 30 CFR 778.13(j) requires the applicant to submit the information required by 30 CFR 778.13 and 778.14 in "any prescribed OSM format that is issued."

The preamble to the Federal regulation states that the purpose for requiring a "prescribed OSM format" is to increase efficiency of data entry and processing in the applicant/violator system (AVS), and that use of an issued standard form "will be required regardless of whether the permit application is filed with OSM or a State regulatory authority" (54 FR 8982, 8985, March 2, 1989). OSM has not yet issued a standard format for submittal of AVS information. Because New Mexico's proposed rule does not preclude New Mexico from using OSM's format when it is issued, the Director finds that proposed CSMC Rule 80-1-7-13(j) is no less effective than the Federal regulation at 30 CFR 778.13(j). The Director approves New Mexico's proposed rule with the understanding that New Mexico will adopt the OSM-prescribed format once it is issued.

4. CSMC Rule 80-1-7-14(c), Compliance Information in Permit Applications

New Mexico proposed at CSMC Rule 80-1-7-14(c) that an application for a permit include a list of (1) all violation notices received by the applicant during the 3-year period preceding the application date and (2) all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining operation owned or controlled by the applicant or anyone who owns or controls the applicant. Such a list must include any violation of (1) a provision of the Act, or (2) any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation

pertaining to air or water environmental protection incurred in connection with any surface coal mining operation. Proposed CSMC Rule 80-1-7-14(c) follows almost verbatim the corresponding Federal regulation at 30 CFR 778.14(c), but as discussed below, its requirements with respect to the use of the term "Act" differ substantively from the Federal requirements (see also finding No. 9(b)).

New Mexico proposed at CSMC Rule 80-1-7-14(c) to require the information described above "[f]or any violation of a provision of the Act." New Mexico defines "Act" at CSMC Rule 80-1-1-5 to mean "the State of New Mexico Surface Mining Act (sections 69-25A-1 et seq. NMSA 1978)" (NMSMA). New Mexico's definition does not indicate that the term "Act" includes the provisions of other laws and regulations enacted or promulgated pursuant to NMSMA or to SMCRA. In contrast, the preamble to 30 CFR 778.14(c) (48 FR 44344, 44389, September 28, 1983) explains that the reference to the "Act" in section 510(c) of SMCRA, on which the Federal regulation is based, includes in addition to SMCRA, SMCRA's implementing regulations and all State and Federal programs approved under SMCRA (53 FR 38868, 38882-38883, October 3, 1988). Thus, 30 CFR 778.14(c) requires information regarding violations received pursuant to SMCRA, its implementing regulations, all Federal programs approved under SMCRA including OSM-administered Indian lands programs, and all State programs approved under SMCRA, not just the New Mexico program.

Because New Mexico's proposed CSMC Rule 80-1-7-14(c) does not require an application to include information on all violations received pursuant to SMCRA, its implementing regulations, and any State or Federal law, rule, or regulation enacted or promulgated pursuant to SMCRA, the Director finds that proposed CSMC Rule 80-1-7-14(c) is less effective than the Federal regulations at 30 CFR 778.14(c). The Director approves proposed CSMC Rule 80-1-7-14(c) but requires that New Mexico further revise CSMC Rule 80-1-7-14(c) so that it requires an application to include, in addition to information on violations received pursuant to NMSMA, information on all violations received pursuant to SMCRA, its implementing regulations, and any State or Federal law, rule, or regulation enacted or promulgated pursuant to SMCRA.

5. CSMC Rule 80-1-9-21(c), Protection of the Hydrologic Balance

New Mexico proposed to revise CSMC Rule 80-1-9-21(c), which requires a probable hydrologic consequences (PHC) determination for the "cumulative impact area," by adding the requirement that the PHC determination address all proposed mining activities associated with the permit area for which a permit is sought, not just those expected to occur during the term of the permit. The "cumulative impact area," as defined at CSMC Rule 80-1-1-5, includes at a minimum, the proposed permit area and such adjacent area as may be impacted by mining activities occurring on the permit area.

The Federal regulations requiring the PHC determination at 30 CFR 780.21(f) and 784.14(e) were challenged in *In Re: Permanent Surface Mining Regulation Litigation*, 21 Env't Rep. Cas. 1724, 15 ELR 20481 (D.D.C. 1984) (PSMRL II, Round II); and, *In Re: Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519 (D.D.C. 1985) (PSMRL II, Round III), on the grounds that they were improperly limited to activities occurring during the "life of the permit" as opposed to the "life of the mine." Rather than ruling on the substance of this argument, the court instead remanded the rules on procedural grounds. As a result of the court decision, OSM suspended the PHC regulations (51 FR 41952, 41957, November 20, 1986).

OSM reexamined the regulations and on September 19, 1988, promulgated regulations at 30 CFR 780.21(f) and 784.14(e) identical to those that had been previously suspended (53 FR 36394, 36400). However, in the preamble to the new regulations, OSM clarified how its interpretation to limit the PHC determination to the permit and adjacent areas was appropriate. OSM interprets section 504(b)(11) of SMCRA to limit the extent of the required PHC determination to all activities authorized by the permit that would impact the permit and adjacent areas. The PHC determination need not consider those activities that may occur during the life of the mine that would be authorized under future permitting activities. A new PHC determination would be required for any additional surface mining activity that could impact the hydrologic regime authorized during the initial permit term or in future permitting actions. A renewal of the initial permit with no changes would not necessitate a new PHC determination. Therefore, OSM considers the PHC determination to be

"spatial" rather than "temporal" in nature (53 FR 36394, 36396-36399, September 19, 1988). A temporal PHC determination would apply to all known mining activities associated with the initial permit area and those that may occur during the life of the mine.

Because the PHC determination proposed by New Mexico must evaluate all activities proposed in the permit application impacting the proposed permit and adjacent areas, it is spatial in nature. Therefore, the Director finds that proposed CSMC Rule 80-1-9-21(c) is no less effective than the Federal regulations at 30 CFR 780.21(f) and 784.14(e) as interpreted by OSM (53 FR 36394, 36396-36399, September 19, 1988) and approves it.

6. CSMC Rules 80-1-9-25(b), (c), and (e), Design Plans for Sedimentation Ponds, Impoundments, and Coal Processing Waste Dams and Embankments

New Mexico proposed to revise CSMC Rules 80-1-9-25(b), (c), and (e) to require that plans for sedimentation ponds, permanent and temporary impoundments, and coal processing waste dams and embankments that are prepared to comply with the requirements of the Mine Safety and Health Administration (MSHA) at 30 CFR 77.216-1 and 77.216-2, also be submitted to the Director of MMD as part of the permit application. New Mexico also proposed to further revise CSMC Rule 80-1-9-25(c) to require that a copy of the plans developed in accordance with 30 CFR 77.216 be submitted to the Director of MSHA.

The Federal regulations at 30 CFR 780.25(b) and (e) and 784.16(b) and (e) require, among other things, that plans for sedimentation ponds and coal processing waste dams and embankments comply with the requirements of MSHA at 30 CFR 77.216-1 and 77.216-2. The Federal regulations at 30 CFR 780.25(c) and 784.16(c) require, among other things, that plans for permanent and temporary impoundments required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall also be submitted to the regulatory authority as part of the permit application.

New Mexico's proposed CSMC Rule 80-1-9-25(c) requires that the plans developed in accordance with 30 CFR 77.216 be submitted to the Director of MSHA, whereas the corresponding Federal regulations at 30 CFR 780.25(c) and 784.16(c) require that these plans be submitted to the District Manager of MSHA. Also, proposed CSMC 80-1-9-25(c) could be construed to be inconsistent with other provisions in

CSMC 80-1-9-25 that, through their general requirements to comply with 30 CFR 77.216, require such plans to be submitted to the District Manager. Although New Mexico's proposed rule is no less effective than the Federal regulations to the extent that any such plans submitted to the Director of MSHA would be forwarded to the appropriate District Manager of MSHA, the proposed rule could nevertheless cause confusion to operators trying to comply with New Mexico's rules and could potentially cause delays in the District Manager receiving the plans. For these reasons, the Director recommends that in a future rulemaking New Mexico revise CSMC 80-1-9-25(c) to require operators to submit the plans to the district Manager of MSHA, not the Director of MSHA.

Insofar as New Mexico requires that plans for sedimentation ponds, impoundments, and coal processing waste dams and embankments comply with 30 CFR 77.216-1 and 77.216-2 and that these plans be sent to the Director of MMD, the Director finds that proposed CSMC Rules 80-1-9-25(b), (c), and (e) are no less effective than the corresponding Federal regulations at 30 CFR 780.25(b), (c), and (e), and 784.16(b), (c), (e), and approves them.

7. CSMC Rule 80-1-9-37, Transportation Facilities

(a) CSMC Rule 80-1-9-37(c)

New Mexico proposed at CSMC Rule 80-1-9-37(c) to require an application to include drawings and specifications for any road, including each ford and low-water crossing, proposed to be located in channels of perennial or intermittent streams. The corresponding Federal regulations at 30 CFR 780.37(a)(2), (a)(3), and (a)(5) and 784.24(a)(2), (a)(3), and (a)(5) require an application to contain drawings and specifications of (1) each ancillary or primary road or road segment that is proposed to be located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the regulatory authority, (2) each ford of an intermittent or perennial stream by a primary road or road segment that is proposed as a temporary route during road construction, and (3) each low-water crossing of an intermittent or perennial stream by a primary road or road segment.

Although proposed CSMC Rule 80-1-9-37(c) is less detailed than are the corresponding Federal regulations, it requires drawings and specifications for all roads proposed to be located in channels of perennial or intermittent streams including fords and low-water

crossings of those streams. Thus, the requirements of New Mexico's proposed CSMC Rule 80-1-9-37(c) closely follow the requirements of the corresponding Federal regulations. However, as discussed below, because of differences in the Federal and New Mexico definitions of "intermittent stream," New Mexico's proposed rule differs substantively from the corresponding Federal regulations with respect to applicability of the rule's requirements.

New Mexico defines "intermittent stream" at CSMC Rule 80-1-1-5 as a stream or reach of stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground-water discharge. The Federal regulations at 30 CFR 701.5 define "intermittent stream" as (1) a stream or reach of a stream that drains a watershed of at least 1 square mile or (2) a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface and ground-water discharges.

New Mexico's definition of "intermittent stream" differs from the Federal definition in that it does not include as intermittent those streams that drain watersheds 1 square mile or greater in area and that flow only in direct response to surface runoff from precipitation or from melting snow or ice within the immediate watershed. This class of streams falls within New Mexico's definition of "ephemeral stream" at CSMC Rule 80-1-1-5. The effect of New Mexico's "intermittent stream" definition, when considered in conjunction with proposed CSMC Rule 80-1-9-37(c), is that, contrary to the Federal requirements at 30 CFR 780.37(a)(2), (a)(3), and (a)(5) and 784.24(a)(2), (a)(3), and (a)(5), a permit application would not have to include drawings and specifications for roads or road segments located in or crossing such streams.

Therefore, because proposed CSMC Rule 80-1-9-37(c) does not afford the same protection to streams that drain watersheds 1 square mile or greater and that flow only in direct response to surface runoff from precipitation or melting snow or ice as is provided by the Federal regulations at 30 CFR 780.37(a)(2), (a)(3), and (a)(5) and 784.24(a)(2), (a)(3), and (a)(5) for such streams, the Director finds that proposed CSMC Rule 80-1-9-37(c) is less effective than the corresponding Federal regulations. The Director approves it but requires New Mexico to revise CSMC Rule 80-1-9-37(c) or otherwise modify its program to extend protection no less effective than the Federal standards to streams that drain

watersheds 1 square mile or greater in area and that flow only in direct response to surface runoff from precipitation or melting snow or ice.

(b) CSMC Rule 80-1-9-37(e)

New Mexico proposed at CSMC Rule 80-1-9-37(e) to require that plans and drawings for each primary road be prepared and certified by a registered professional engineer, or a qualified, registered professional land surveyor, experienced in the design and construction of roads. The corresponding Federal regulations at 30 CFR 780.37(b) and 784.24(b) require that "plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or * * * a qualified registered professional land surveyor, with experience in the design and construction of roads." Proposed CSMC Rule 80-1-9-37(e) does not require preparation and certification by a qualified registered professional engineer as do the Federal regulations.

On March 17, 1989, the Director of OSM approved CSMC Rule 80-1-20-71(b) concerning the disposal of excess spoil (51 FR 11183, 11184). That rule requires that all coal processing waste banks be certified by a "qualified registered professional engineer." It does not include the phrase "experienced in the design of similar earth and waste structures" as do the corresponding Federal regulations at 30 CFR 816.81(c)(1) and 817.81(c)(1). In approving CSMC Rule 80-1-20-71(b), the Director cited New Mexico's Engineering and Land Surveying Practice Act, Section (O) (Rules of Professional Conduct), Subsection 2 (Specialization and the Performance of Services Only in Specific Areas of Competence) (Administrative Record No. NM-419) that requires that (1) professional engineers and professional land surveyors undertake assignments only when qualified by education, experience, or examination in the specific technical fields of engineering or land surveying involved and (2) registrants not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competence, nor to any such plan or documents not prepared under their general direction or control. Thus, a person holding a current license or certificate issued by the New Mexico State Board of Registration for Professional Engineers and Land Surveyors is prohibited from undertaking assignments or affixing his/her signature or seal to documents dealing with specific technical areas of engineering for which he/she lacks

competence, i.e. does not have adequate education, examination, and experience in that specific area of engineering.

On that basis, the Director found that the proposed phrase "qualified, registered professional engineer" in conjunction with the New Mexico Engineering and Land Surveying Practice Act was no less effective than the corresponding phrase "a qualified registered professional engineer, experienced in the design of similar earth and waste structures" from the Federal regulations at 30 CFR 816.81(c)(1) and 817.81(c)(1). In effect, the Director agreed that New Mexico's procedures for administering and enforcing its Engineering and Land Surveying Practice Act provide sufficient assurance that a person holding a current license or certificate issued by the New Mexico State Board of Registration for Professional Engineers and Land Surveyors has experience and education in the specific technical engineering fields in question, and therefore is "qualified" to design and certify in those fields.

The situation is similar for the proposed rule that is the subject of this finding. Proposed CSMC Rule 80-1-9-37(e) requires that plans and drawings for each primary road be prepared and certified by a registered professional engineer, or a qualified, registered professional land surveyor, experienced in the design and construction of roads. By the reasoning described above, which was used in approving CSMC Rule 80-1-20-71(b), the Director finds that proposed CSMC Rule 80-1-9-37(e), as implemented in conjunction with the New Mexico Engineering and Land Surveying Practice Act, is no less effective than the Federal requirements at 30 CFR 780.37(b) and 784.24(b). Therefore, the Director approves the proposed rule.

8. CSMC Rules 80-1-9-39(b), (c), and (d), Permit Application Requirements for Subsidence Information and Control Plan

(a) CSMC Rule 80-1-9-39(b), Prevention of Material Damage

New Mexico proposed to revise CSMC Rule 80-1-9-39(b) to require that a permit application for an underground mine include, among other things, a description of the means, if any, by which the operator will prevent material damage to structures, facilities, and renewable resources, maximize mine stability, and maintain the value in the reasonably foreseeable use of the affected land surface and renewable resource lands. By inclusion of the phrase "if any," the applicant would not

always be required to include in the application a description of the means by which the operator will prevent material damage to structures, facilities, and renewable resource lands, maximize mine stability, and maintain the value in the reasonably foreseeable use of the affected surface land and renewable resource lands.

The Federal regulation at 30 FR 784.20 (introductory paragraph) requires a permit application for an underground mine to include a survey that indicates whether structures or renewable resource lands exist within the permit area and adjacent areas, and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey shows, and the regulatory authority agrees, that no structures or renewable resource lands exist or that no material damage or diminution could be caused in the event of subsidence, then a subsidence control plan with a description of the subsidence control measures to be taken to prevent or minimize subsidence and subsidence-related damage is not required.

However, when a subsidence control plan has been determined necessary pursuant to 30 CFR 784.20 (introductory paragraph), the Federal regulation at 30 CFR 784.20(e), which corresponds to CSMC Rule 80-1-9-39(b), requires the subsidence control plan to include a detailed description of the technologically and economically feasible subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, except for those areas where planned subsidence is projected to be used.

Thus, if a subsidence control plan is required at all, a description of subsidence control measures must be included in the plan unless planned subsidence is used.

Similarly, New Mexico's CSMC Rule 80-1-9-39 requires certain specified information to be in all applications, including a description of structures and renewable resource lands that may be affected by subsidence of underground workings, and a statement indicating whether subsidence may occur and whether the subsidence will result in material damage to the land surface, structures or renewable resource lands. It follows that, if this required information indicates that no structures or renewable resource lands exist within the permit and adjacent areas or that no material damage could be caused in the event of subsidence, then a description of the means by which the operator would prevent or

minimize subsidence and subsidence-related damage would not be necessary.

Therefore, to the extent that New Mexico's use of the phrase "if any" at proposed CSMC Rule 80-1-9-39(b) simply means that the applicant does not have to provide a description of the means by which he or she would prevent or minimize subsidence and subsidence-related damage because no structures or renewable resource lands exist within the permit and adjacent areas or no material damage could be caused in the event of subsidence, New Mexico's proposed rule is consistent with the Federal regulations at 30 CFR 784.20. On this basis, the Director finds that proposed CSMC Rule 80-1-9-39(b) is no less effective than the corresponding Federal regulation at 30 CFR 784.20(e) and approves it.

(b) CSMC Rule 80-1-9-39(c), Mitigation or Remedy of Material Damage

New Mexico's proposed new paragraph at CSMC Rule 80-1-9-39(c) states that an application must include "a description of the measures to be taken in accordance with CSMC Rule 80-1-20-121 and 124 to mitigate or remedy any subsidence-related damage to, or diminution in value or reasonably foreseeable use of the land, structures or facilities to the extent required under State law."

Because of the way that New Mexico has structured the sentence containing the proposed requirements, it is not clear what New Mexico intended. OSM interprets the proposed rule to require that an application shall include a description of the measures to be taken in accordance with CSMC Rules 80-1-20-121 and 124 to mitigate or remedy any subsidence-related damage to, or diminution in value or reasonably foreseeable use of (1) structures or facilities to the extent required by State law and (2) the land to the extent required by State law.

The corresponding Federal regulation at 30 CFR 784.20(g) requires a description of the measures that are technologically and economically feasible to be taken in accordance with 30 CFR 817.121 to mitigate or remedy subsidence-related damage to (1) structures or facilities to the extent required under State law or (2) the land. The Federal regulations at 30 CFR 817.121(c)(1) and (c)(2) require that an operator (1) correct any subsidence-related material damage to surface lands by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence, and (2) to the extent required by State law, either repair the

damage or compensate the owner for material damage to structures or facilities caused by subsidence. In addition, section 720 of SMCRA, as added by section 2504 of the Energy Policy Act of 1992 (Pub. L. 102-486, 106 Stat. 2776, 3104) requires an operator to promptly repair damage or compensate the owner for any subsidence-related material damage to occupied residential dwellings, structures related thereto, or noncommercial buildings that was caused by an underground mining operation conducted after October 24, 1992.

Thus, under section 720 of SMCRA, measures to mitigate or remedy subsidence-related material damage to structures or facilities can be limited by State law only when such damage is the result of underground mining operations conducted on or before October 24, 1992. State law cannot serve to limit an operator's liability to mitigate or remedy (1) any subsidence-related damage to the land or (2) subsidence-related damage incurred after October 24, 1992, to occupied residential dwellings, structures related thereto, or to noncommercial buildings.

In contrast to the Federal requirements, New Mexico's proposed CSMC Rule 80-1-9-39(c) (1) allows an operator to limit to the extent required under State law the required description of measures to mitigate or remedy subsidence-related material damage to the land and (2) does not require a description of measures to be taken to mitigate or remedy subsidence-related damage incurred after October 24, 1992, to occupied residential dwellings, structures related thereto, or noncommercial buildings. In addition, proposed CSMC Rule 80-1-9-39(c) is inconsistent with proposed CSMC Rule 80-1-20-124, which does not impose the applicable State law limitation on an operator's obligation to correct subsidence-related material damage.

For the reasons discussed above, the Director finds that proposed CSMC Rule 80-1-9-39(c) is less effective than the Federal regulation at 30 CFR 784.20(g) and less stringent than section 720 of SMCRA. The Director does not approve proposed CSMC Rule 80-1-9-39(c) and requires New Mexico to revise it to require a permit application to include a description of measures that an operator would use to mitigate or remedy subsidence-related material damage to (1) the land and (2) occupied residential dwellings, structures related thereto, and noncommercial buildings where the damage resulted from underground mining operations conducted after October 24, 1992.

(c) CSMC Rule 80-1-9-39(d)(2),
Measures to Prevent Subsidence-Related
Damage

New Mexico's existing existing CSMC Rule 80-1-9-39(c) was recodified as CSMC Rule 80-1-9-39(d) in the proposed amendment. Recodified CSMC Rule 80-1-9-39(d) states that the Director may require the applicant, as a permit condition, to adopt measures to prevent subsidence from causing material damage to the extent technologically and economically feasible, subject to certain provisions. New Mexico proposed to revise one of those provisions at CSMC Rule 80-1-9-39(d)(2) to clarify that no such measures shall be required if the damage anticipated, not only to the land surface or renewable resource lands but also to structures and facilities, even if material, can be and is required to be reclaimed by the applicant on the land surface following subsidence.

There is no direct Federal counterpart to proposed CSMC Rule 80-1-9-39(d)(2). The Federal regulation at 30 CFR 817.121(a) requires an operator to either adopt measures consistent with known technology that prevent subsidence from causing damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands, or adopt mining technology that provides for planned subsidence in a predictable and controlled manner. The Federal regulation at 30 CFR 817.121(a) also states that nothing in the rule shall be construed to prohibit the standard method of room-and-pillar mining. New Mexico's program contains a substantively identical requirement at CSMC Rule 80-1-20-121(a). Just as 30 CFR 817.121(a) is not discretionary with the Director of OSM, CSMC Rule 80-1-20-121(a) is not discretionary with the State program Director.

The Director finds that because New Mexico's proposed CSMC Rule 80-1-9-39(d)(2) would allow material damage to occur without applying technologically and economically feasible measures to prevent or minimize such damage, it is less effective than the Federal regulation at 30 CFR 817.121(a) and inconsistent with proposed CSMC Rule 80-1-20-121(a). Therefore, the Director does not approve New Mexico's proposed revision of CSMC Rule 80-1-9-39(d)(2) and requires New Mexico to revise CSMC Rule 80-1-9-39(d) to remove in its entirety the exception allowed at paragraph (d)(2).

9. CSMC Rules 80-1-11-17 and 80-1-11-19, Criteria for Permit Approval or Denial

(a) CSMC Rule 80-1-11-17(c), Failure to Abate Cessation Orders

New Mexico proposed at CSMC Rule 80-1-11-17(c) that, in the absence of a failure-to-abate cessation order, the Director may presume that a notice of violation has been or is being corrected. This portion of the proposed rule is substantively identical to the corresponding portion of the Federal regulation at 30 CFR 773.15(b)(1). However, the Secretary of the Interior, in *National Wildlife Federation v. Lujan*, Civ. Nos. 88-3117, *et seq.* (Consolidated, D.D.C. filed October 27, 1988) (Memorandum of Points and Authorities In Support of the Federal Defendants' Cross-Motion For Summary Judgment and In Opposition to Plaintiffs' Motions For Summary Judgment, pp. 89-90), has expressed his intention to reconsider the issue of whether, in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation has been or is being corrected, as set forth in the Federal regulation.

Therefore, pending final resolution of the reconsideration currently being pursued by the Secretary regarding the Federal regulation at 30 CFR 773.15(b)(1), the Director defers action on that portion of proposed CSMC Rule 80-1-11-17(c) that addresses the presumption discussed above.

(b) CSMC Rule 80-1-11-17(c), Any Violation of the Act by Controlling Interests

New Mexico also proposed at CSMC Rule 80-1-11-17(c) that the Director of MMD shall not issue a permit if any surface mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection, or of any provision of the Act. In addition, proposed CSMC Rule 80-1-11-17(c) provides that, to determine whether the applicant is in violation of one of the above laws, rules, or regulations, the Director of MMD will consider all available violation information, including violation information concerning Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties issued under the SMCRA or any approved State program, bond forfeitures where

violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

Proposed CSMC Rule 80-1-11-17(c) requires the Director of MMD, in determining whether to issue a permit, to consider information on "delinquent civil penalties issued under the Surface Mining Control and Reclamation Act or any approved state program." The corresponding Federal regulation at 30 CFR 773.15(b)(1) requires the regulatory authority, in determining whether to issue a permit, to consider information on "delinquent civil penalties issued pursuant to section 518 of the Act" (SMCRA). OSM interprets the phrase "delinquent civil penalties issued pursuant to section 518 of the Act" to include penalties issued under SMCRA, its implementing regulations, and all State and Federal programs enacted or promulgated pursuant to SMCRA (53 FR 38868, 38881, October 3, 1988).

Because New Mexico does not define the term "Surface Mining Control and Reclamation Act" it is not clear whether the proposed phrase "delinquent civil penalties issued under the Surface Mining Control and Reclamation Act or any approved state program" would require consideration of delinquent civil penalties issued pursuant to derivative Federal programs encompassed by the Federal phrase "section 518 of the Act." Although proposed CSMC Rule 80-1-11-17(c), by inclusion of the phrase, "or any approved state program," requires consideration of delinquent civil penalties issued pursuant to all OSM-approved State programs, the proposed rule does not appear to require consideration of delinquent civil penalties issued pursuant to (1) the Federal regulations at 30 CFR chapter VII, (2) the Indian Lands program, or (3) any of the Federal programs for States.

With respect to the other proposed requirements of CSMC Rule 80-1-11-17(c), it, like the Federal regulation at 30 CFR 773.15(b)(1), prohibits issuance of a permit if the applicant or any person who owns or controls the applicant is currently in violation of certain laws, rules, or regulations. However, proposed CSMC Rule 80-1-11-17(c) and the Federal regulation differ in the specification of those laws, rules, and regulations. The Federal regulation at 30 CFR 773.15(b)(1) prohibits permit issuance if a controlling entity is currently "in violation of the Act or any other law, rule or regulation referred to in this paragraph." Proposed CSMC

Rule 80-1-11-17(c) prohibits permit issuance if a controlling entity is currently in violation of "any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection, or of any provision of the Act." New Mexico's proposed list of laws, rules, and regulations is less inclusive than the phrase "the Act or any other law, rule or regulation referred to in this paragraph" contained in 30 CFR 773.15(b)(1). While both the Federal regulation at 30 CFR 773.15(b)(1) and proposed CSMC Rule 80-1-11-17(c) prohibit permit issuance if a controlling entity is currently in violation of the "Act," their requirements with respect to use of the term "Act" differ substantially. As discussed in finding No. 4, the reference to the "Act" in section 510(c) of SMCRA includes SMCRA, SMCRA's implementing regulations, and all State and Federal programs approved under SMCRA (53 FR 38868, 38882-38883, October 3, 1988). In contrast, New Mexico's definition of "Act" includes only NMSMA. The term does not include the provisions of SMCRA, SMCRA's implementing regulations, or any State or Federal law, rule, or regulation enacted or promulgated pursuant to SMCRA. Therefore, New Mexico's proposed phrase "any provision of the Act" does not prohibit, as the Federal regulation at 30 CFR 773.15(b)(1) does, issuance of a permit when a controlling interest is currently in violation of the provisions of (1) SMCRA, (2) the Federal regulations at 30 CFR Chapter VII, the Federal program for Indian lands, (4) Federal programs for States, or (5) OSM-approved State programs other than the New Mexico program.

Based on the discussions above, the Director finds that proposed CSMC Rule 80-1-11-17(c) is less effective than the corresponding Federal regulation at 30 CFR 773.15(b)(1) because (1) it is not clear that New Mexico's proposed phrase "delinquent civil penalties issued under the Surface Mining Control and Reclamation Act or any approved state program" would require, as a basis for permit denial, consideration of violation information concerning delinquent civil penalties issued pursuant to all of the derivative State and Federal programs encompassed by the Federal phrase "section 518 of the Act," and (2) New Mexico's proposed phrase "any provision of the Act" does not prohibit issuance of a permit when an applicant or any person who owns or controls the

applicant is currently in violation of SMCRA, the Federal regulations at 30 CFR Chapter VII, the Federal program for Indian lands, Federal programs for States, or OSM-approved programs other than the New Mexico program.

Therefore, with the exception of the portion of proposed CSMC Rule 80-1-11-17(c) that addressed the presumption that a notice of violation has been corrected (finding No. 9(a)), the Director approves proposed CSMC Rule 80-1-11-17(c) but requires that New Mexico further revise CSMC Rule 80-1-11-17(c) or otherwise revise its program to (1) require, as a basis of permit denial, consideration of violation information concerning delinquent civil penalties issued pursuant to derivative State and Federal programs encompassed by the Federal phrase "section 518 of the Act," and (2) prohibit the Director of MMD from issuing a permit if an applicant or any person who owns or controls an applicant is currently in violation of SMCRA, the Federal regulations at 30 CFR Chapter VII, the Federal program for Indian lands, Federal programs for States, or OSM-approved programs other than the New Mexico program.

(c) CSMC Rule 80-1-11-17(d) and 19(i), Demonstrated Pattern of Willful Violations of the Act

New Mexico proposed at CSMC Rule 80-1-11-17(d) that an applicant or operator must be afforded an opportunity for an adjudicatory hearing before the Director of MMD makes a final determination that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled a surface coal mining and reclamation operation with a demonstrated pattern of willful violations of the Act. New Mexico also proposed at CSMC Rule 80-1-11-19(i) that a permit or permit revision cannot be approved unless the Director of MMD finds in writing that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, does not control or has not controlled a surface coal mining and reclamation operation with a demonstrated pattern of willful violations of the Act.

The Federal regulation at 30 CFR 773.15(b)(3) requires that if the regulatory authority finds that an owning or controlling entity of a proposed surface coal mining and reclamation operation controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the SMCRA, then (1) no

permit shall be issued, and (2) before such a finding becomes final, the applicant or operator must be afforded an opportunity for an adjudicatory hearing on the determination.

Consistent with the Federal regulations at 30 CFR 773.15(b)(3), proposed CSMC Rule 80-1-11-17(d), in conjunction with proposed CSMC Rule 80-1-11-19(i), (1) provides the applicant an opportunity for an adjudicatory hearing if the Director of MMD determines that a demonstrated pattern of willful violations exists and (2) prohibits approval of a permit unless the Director of MMD finds in writing that no demonstrated pattern of willful violations of the Act exists.

However, both proposed CSMC Rules 80-1-11-17(d) and 19(i) have the same deficiency with respect to the use of the term "Act" as do proposed CSMC Rules 80-1-7-14(c) and 11-17(c) discussed, respectively, in finding Nos. 4 and 9(b) above. Thus, when the Director of MMD makes a determination of whether a demonstrated pattern of willful violations of the Act exists, New Mexico's proposed rules require the Director of MMD to consider only those violations received pursuant to NMSMA.

Therefore, because proposed CSMC Rules 80-1-11-17(d) and 19(i) only require the Director of MMD to consider violations received pursuant to NMSMA by the applicant, anyone who owns or controls the applicant, or the operator named in the application, the Director finds that New Mexico's proposed CSMC Rules 80-1-11-17(d) and 19(i) are less effective than the corresponding regulation at 30 CFR 773.15(b)(3). The Director approves proposed CSMC Rules 80-1-11-17(d) and 11-19(i) but requires that New Mexico further revise them to require that the Director of MMD, when making a determination of whether a demonstrated pattern of willful violations exists, also consider violations received by the applicant, anyone who owns or controls the applicant, or the operator named in the application pursuant to SMCRA, the Federal regulations at 30 CFR Chapter VII, the Federal program for Indian lands, Federal programs for States, or OSM-approved programs other than the New Mexico program.

10. CSMC Rule 80-1-11-20(b), Improvidently Issued Permits

New Mexico proposed at CSMC Rule 80-1-11-20(b) criteria for determining whether a surface coal mining and reclamation permit was improvidently issued.

(a) CSMC Rules 80-1-11-20(b)(1) and (b)(3)

New Mexico proposed at CSMC Rule 80-1-11-20(b)(1) and (b)(3), respectively, that the Director of MMD find that a permit was improvidently issued if (1) according to CSMC Rule 80-1-7-14 at the time the permit was issued, either of the two conditions specified at paragraphs (b)(1)(i) and (ii) are met, and (2) the permittee was linked to the person responsible for a violation, penalty, or fee through ownership or control, according to CSMC Rule 80-1-7-14 at the time the permit was issued, and such link still exists, or where such a link was severed, the permittee continues to be responsible for the violation, penalty or fee.

The corresponding Federal regulations at 30 CFR 773.20(b)(1) and (b)(3) refer to "the violations review criteria of the regulatory program" by which a regulatory authority must determine whether a permit was improvidently issued. In the April 28, 1989, *Federal Register* (54 FR 18438, 18440-18441), OSM discusses what these criteria must include. Except for the reference to CSMC Rule 80-1-7-14, proposed CSMC Rules 80-1-11-20(b)(1) and (b)(3) are substantively identical to the corresponding Federal regulations at 30 CFR 773.20(b)(1) and (b)(3).

Referenced CSMC Rule 80-1-7-14 lists specific compliance information that must be submitted with a permit application, but it does not include the violation review criteria. The violations review criteria under the New Mexico program are identified at proposed CSMC Rule 80-1-11-20(b)(1)(iii) as the applicable violations review criteria included in the preamble of the *Federal Register* at 54 FR 18438, 18440-18441 (April 28, 1989). Because New Mexico incorrectly references CSMC Rule 80-1-7-14 instead of CSMC Rule 80-1-11-20(b)(1)(iii), proposed CSMC Rules 80-1-11-20(b)(1) and (b)(3) are less effective than the Federal regulations at 30 CFR 773.20(b)(1) and (b)(3).

The Director does not approve CSMC Rules 80-1-11-20(b)(1) and (b)(3) to the extent that they reference CSMC Rule 80-1-7-14 and do not incorporate the violations review criteria at CSMC Rule 80-1-11-20(b)(1)(iii). The Director requires that New Mexico revise CSMC Rules 80-1-11-20(b)(1) and (b)(3) to reference CSMC Rule 80-1-11-20(b)(1)(iii) instead of CSMC Rule 80-1-7-14.

(b) CSMC Rules 80-1-11-20(b)(1)(ii)

New Mexico proposed at CSMC Rule 80-1-11-20(b)(1)(ii) that the Director of

MMD shall find that a permit was improvidently issued if the permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order was subsequently issued. This proposed language is substantively identical to the corresponding Federal regulation at 30 CFR 773.20(b)(1)(ii).

However, because proposed CSMC Rule 80-1-11-20(b)(1)(ii) relates to the same presumption issue discussed in finding No. 9(a) above, and the Secretary has indicated his intention to reconsider the corresponding Federal regulation at 30 CFR 773.20(b)(1)(ii) in addition to 30 CFR 773.15(b)(1)(i), the Director defers action on proposed CSMC Rule 80-1-11-20(b)(1)(ii).

(c) CSMC Rule 80-1-11-20(b)(1)(iii), Violations Review Criteria

New Mexico proposed at CSMC Rule 80-1-11-20(b)(1)(iii) that the Director of MMD shall use the applicable violations review criteria listed in the *Federal Register* at 54 FR 18438, 18440-18441 (April 28, 1989) for determining what specific unabated violations, delinquent penalties and fees, and ownership and control relationships must be considered in determining whether a permit was improvidently issued.

The corresponding Federal regulation at 30 CFR 773.20(b)(1) requires the regulatory authority to use "the violations review criteria of the regulatory program at the time the permit was issued" in determining whether a permit was improvidently issued. The preamble to this regulation states that the term "violations review criteria" means "those permitting provisions of a regulatory program under which the regulatory authority reviews the relationship of the applicant to outstanding violations and delinquent penalties and fees and determines whether a permit should be withheld." (54 FR 18438, 18438-9, April 28, 1989). The preamble also lists the minimum violations review criteria that a regulatory program should include and further states that State programs may include more stringent criteria (54 FR 18438, 18440-18441, April 28, 1989).

In specifying the violations review criteria as listed in the above referenced *Federal Register*, New Mexico proposed to adopt the minimum violation review criteria specified by the Federal regulations. New Mexico proposed to retain the general nature of the criteria and did not specify the actual calendar dates on which each of the criteria became or would become effective.

Therefore, New Mexico must determine the appropriate criteria and corresponding effective dates at the time that a review is conducted.

Because New Mexico proposed to include the minimum violations review criteria required by the Federal regulations, the Director finds that proposed CSMC Rule 80-1-11-20(b)(1)(iii) is no less effective than 30 CFR 773.20(b)(1) and approves it.

11. CSMC Rule 80-1-11-29(d), Conditions of Permits for Environment, Public Health, and Safety

New Mexico proposed at CSMC Rule 80-1-11-29(d) that a permittee, within 30 days of receiving a cessation order issued under CSMC Rule 80-1-30-11, submit to the Director of MMD (1) the information required at CSMC Rule 80-1-7-13(c) concerning identification of interests, (2) any new information needed to correct or update information previously submitted under CSMC Rule 80-1-7-13(c), or (3) a written notification that there has been no change in the information previously submitted under CSMC Rule 80-1-7-13(c). With one exception discussed below, proposed CSMC Rule 80-1-11-29(d) is substantively identical to the corresponding Federal regulation at 30 CFR 773.17(i). The Federal regulation at 30 CFR 773.17(i) requires all permits to include a condition specifying that, within 30 days after a cessation order is issued under 30 CFR 843.11 or the State program equivalent, the permittee must submit certain ownership and control information to the regulatory authority, or if there has been no change since the immediately preceding submittal of such information, to so notify the regulatory authority in writing. As explained in the preamble to the Federal regulation (54 FR 8982, 8986, March 2, 1989), the permit condition at 30 CFR 773.17(i) applies whenever a cessation order is issued, regardless of the issuing authority. Proposed CSMC Rule 80-1-11-29(d) requires a permittee to update ownership and control information only for cessation orders issued by New Mexico under CSMC Rule 80-1-30-11. It does not require updating for Federal cessation orders issued under 30 CFR 843.11.

Because proposed CSMC Rule 80-1-11-29(d) requires a permittee to update ownership and control information only for cessation orders issued by New Mexico under CSMC Rule 80-1-30-11, the Director finds that proposed CSMC Rule 80-1-11-29(d) is less effective than the corresponding Federal regulation at 30 CFR 773.17(i). The Director approves proposed CSMC Rule 80-1-11-29(d) but requires New Mexico

to revise it to require the permittee to submit to the Director of MMD the ownership and control information required at CSMC Rule 80-1-11-29(d)(1), (d)(2), and (d)(3) when a Federal cessation order has been issued in accordance with 30 CFR 843.11.

12. CSMC Rule 80-1-19-15(c), Performance Standards for Roads Used for Coal Exploration

New Mexico proposed to revise CSMC Rules 80-1-19-15(c)(2), (c)(3), and (c)(4) to correct references to other rules and to clarify the requirements for new and existing roads used for conducting coal exploration activities. Proposed CSMC Rule 80-1-19-15(c)(2) requires all new roads used for exploration for less than 6 months to meet the requirements of CSMC Rules 80-1-20-150(b) through (f). In addition, new roads that will be used longer than 6 months must meet the requirements of CSMC Rules 80-1-20-150 through 151, and all new roads must comply with CSMC Rules 80-1-20-180 and 181 pertaining to other transportation facilities, support facilities, and protection of utilities. Proposed CSMC Rule 80-1-19-15(c)(3) requires, among other things, that (1) all existing roads comply with the requirements of CSMC Rules 80-1-20-180 and 181, (2) existing roads that are significantly altered for exploration activities must comply with the requirements of CSMC Rules 80-1-20-150(b) through (g), and (3) any road that will remain as a permanent road after exploration activities are completed must meet the design, construction, alteration, and maintenance requirements at CSMC Rules 80-1-20-150 through 151. Proposed CSMC Rule 80-1-19-15(c)(4) requires upon completion of exploration activities that all roads either be reclaimed in accordance with CSMC Rules 80-1-20-150(g) or meet the requirements for permanent roads at CSMC Rules 80-1-20-150 through 151.

The corresponding Federal regulations at 30 CFR 815.15(b) require that all roads and other transportation facilities used for coal exploration must comply with applicable provisions at 30 CFR 816.150(b) through (f) concerning general requirements for roads, 30 CFR 816.180 concerning protection of existing utility installations, and 30 CFR 816.181 concerning requirements for support facilities.

Whereas the Federal regulations require all roads used for coal exploration to comply with the specified requirements, New Mexico's proposed rules specify requirements for three separate categories of roads used for coal exploration activities: new

roads, existing roads, and existing roads that are significantly altered for exploration activities. New Mexico has not specifically addressed requirements for existing roads that are not significantly altered for exploration, but such roads are subject to some of New Mexico's performance standards for exploration roads because (1) proposed CSMC Rule 80-1-19-15(c)(3) requires all existing roads to comply with all applicable Federal, State and local requirements and with the requirements of sections 20-180 and 20-181, and (2) proposed CSMC Rule 80-1-19-15(c)(4) requires all roads used during exploration to comply with the reclamation requirements at subparagraphs (c)(4)(i) and (ii). New Mexico's proposed rules do not, as do the Federal regulations at 30 CFR 815.15(b) through (f), require that all roads comply with the corresponding general performance standards for roads at CSMC Rules 80-1-20-150(b) through (f). Specifically, existing roads that are used for coal exploration and that are not significantly altered are not required to comply with CSMC Rule 80-1-20-150 (b) through (f).

The Federal regulations at 30 CFR 815.1 state that 30 CFR Part 815 sets forth the performance standards required for coal exploration that substantially disturbs the natural land surface, and the Federal regulations at 30 CFR 815.15(b) require all roads used for coal exploration to comply with the applicable provisions of 30 CFR 816.150(b) through (f). However, the preamble to 30 CFR 815.15(b) states that the extent to which the requirements of 30 CFR 816.150 must be applied to exploration roads can be limited to "the extent that the coal exploration activities substantially disturb the land where the road is located" (53 FR 45190, 45198, November 8, 1988). According to the definition of "substantially disturb" at 30 CFR 701.5, the construction of roads and other access routes for coal exploration constitutes substantial disturbance. The preamble also explains what coal exploration road-use activities OSM believes do not constitute substantial disturbance.

The determination of when "substantial disturbance" has occurred must be made on a site-by-site basis. OSMRE [OSM] does not believe the routine maintenance of an existing road used for coal exploration is substantial disturbance requiring the road to be reclaimed in accordance with the performance standards of section 515 of the Act (SMCRA). To use an existing road that is in poor condition due to lack of maintenance, a coal exploration operator may

need to blade the road surface, replace some culverts, or do other minor routine maintenance. Such routine maintenance of an existing road would not be considered substantial disturbance of the natural land surface that would require reclamation of the road (53 FR 45190, 45198, November 8, 1988).

Existing CSMC Rule 80-1-19-15(c)(3)(ii) states that significantly altering an existing road for coal exploration includes, but is not limited to, altering the gradient, width, or route of the road. New Mexico has not specified what it considers to be activities that do not significantly alter existing roads. However, because New Mexico has not listed such routine road maintenance activities as grading the surface, cleaning or replacing culverts, and other minor rehabilitation activities with the activities that significantly alter a road and because OSM does not believe that such activities cause substantial disturbance to the land surface, it is reasonable to conclude that these are road construction and maintenance activities that do not significantly alter existing roads used for coal exploration in New Mexico. Therefore, to the extent that (1) proposed CSMC Rules 80-1-19-15(c)(3) and (c)(4) apply to existing roads that are not significantly altered for coal exploration activities and (2) the activities that define such roads are limited to surface grading, cleaning or replacing culverts, and other minor rehabilitation activities, the Director finds that these aspects of proposed CSMC Rules 80-1-19-15(c)(3), and (c)(4) are not inconsistent with the corresponding Federal regulations at 30 CFR 815.15(b).

With respect to the other requirements, proposed CSMC Rules 80-1-19-15(c)(2), (c)(3), and (c)(4) reference the requirements of CSMC Rule 80-1-20-180. CSMC Rule 80-1-20-180 is titled "[o]ther transportation facilities" and sets general performance standards for the design, construction, reconstruction, maintenance and restoration of railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities. New Mexico's listing of railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, and other transportation facilities at CSMC Rule 80-1-20-180 as "other transportation facilities" is not inconsistent with the preamble for the Federal regulations at 30 CFR 815.15(b) that identified "other transportation facilities" as "any 'other transportation facilities' used in the exploration operation besides roads" (48 FR 40622, 40632; September 8, 1983). However,

the reference to CSMC Rule 80-1-20-180 at proposed CSMC Rules 80-1-19-15(c)(2), and (c)(3), does not satisfy the requirement of the Federal regulations at 30 CFR 816.15(b) that "other transportation facilities" used for coal exploration must meet the applicable performance standards for roads, support facilities, and utilities.

Because New Mexico's proposed rules do not require "other transportation facilities" used for exploration activities to comply with the performance standards for roads, support facilities, and utilities, respectively, at CSMC Rules 80-1-20-150(b) through (g) and 20-181(a) and (b), the Director finds that proposed CSMC Rules 80-1-19-15(c)(2), (c)(3), and (c)(4) are less effective than the corresponding Federal regulations at 30 CFR 816.15(b). The Director approves CSMC Rules 80-1-19-15(c)(2), (c)(3) and (c)(4) but requires New Mexico to further revise CSMC Rule 80-1-19-15(c) to require that "other transportation facilities" used for coal exploration activities comply with CSMC Rules 80-1-20-150(b) through (g), and 20-181(a) and (b).

13. CSMC Rule 80-1-20-91(c) and 20-93(e), Coal Processing Waste Dams and Embankments

New Mexico proposed new paragraphs at CSMC Rules 80-1-20-91(c) and 20-93(e) that prohibit any dam, embankment, or impounding structure constructed of coal processing waste or intended to impound coal processing waste from being retained permanently as part of the postmining land use unless it is reclaimed according to CSMC Rule 80-1-9-25 and positive drainage with no impoundment of water has been achieved. New Mexico's term "coal processing waste" has the same meaning as the Federal term "coal mine waste" (56 FR 67520, 67523; December 31, 1991).

The corresponding Federal regulations at 30 CFR 816.84(b)(1) and 817.84(b)(1), in part, prohibit impounding structures constructed of coal mine waste or intended to impound coal mine waste from being retained permanently as part of the approved postmining land use. The Federal regulations at 30 CFR 816.84 and 817.84 further require such structures to meet the requirements at 30 CFR 816.81 and 817.81.

Proposed CSMC Rules 80-1-20-91(c) and 20-93(e) require dams, embankments, and impounding structures constructed of coal processing waste or intended to impound coal processing waste to be reclaimed "in accordance with Section 9-25." New Mexico's rules at CSMC

Rule 80-1-9-25 set forth permit application requirements for reclamation plans and designs concerning ponds, impoundments, banks, dams and embankments. It does not contain the performance standards that reclaimed structures constructed of or impounding coal processing waste must meet as do the Federal regulations at 30 CFR 816.81 and 817.81.

More specifically, the Federal regulations at 30 CFR 816.81(a) and 817.81(a) require that coal mine waste be hauled or conveyed and placed in its final location in a controlled manner to (1) minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity, (2) ensure mass stability and prevent mass movement during and after construction, (3) ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use, (4) not create a public hazard, and (5) prevent combustion. The intent of these requirements is to ensure that surface deposits of coal mine waste retained permanently as part of the approved postmining land use exhibit long-term stability with respect to drainage control, surface erosion, mass movement, combustion, public safety, and seepage (48 FR 44006, 44012, September 26, 1983). New Mexico's proposed reference to "Section 9-25" does not provide equivalent requirements to assure the long-term stability and safety of such deposits.

On this basis, the Director finds that proposed CSMC Rules 80-1-20-91(c) and 20-93(e) are less effective than the corresponding Federal regulations at 30 CFR 816.84(b)(1) and 817.84(b)(1) and does not approve them to the extent that they include the phrase "unless these structures have been reclaimed according to Section 9-25 and positive drainage with no impoundment of water has been achieved."

14. CSMC Rule 80-1-20-93, Design and Construction of Coal Processing Waste Dams and Embankments

(a) CSMC Rule 80-1-20-93(a)(1), Freeboard and Water Surface Elevation Design

CSMC Rule 80-1-20-93(a)(1) specifies a minimum design freeboard of 3 feet for each dam and embankment constructed of coal processing waste or intended to impound such waste. New Mexico proposed to revise CSMC Rule 80-1-20-93(a)(1) to require that the maximum water elevation shall be determined by the freeboard hydrograph

criteria contained in the U.S. Soil Conservation Service's (SCS) Practice Standard 378, "Ponds," dated October 1978.

The counterpart Federal regulations at 30 CFR 816.84(b)(1) and 817.84(b)(1), by reference to 30 CFR 816.49 (a) and (c) and 817.49 (a) and (c), do not specify a minimum freeboard for impoundments but require, at 30 CFR 816.49(a)(4) and 817.49(a)(4) "adequate freeboard to resist overtopping by waves and by sudden increases in storage volume." The Federal regulations also do not specify methods for determining "adequate freeboard" or for calculating maximum water surface elevations.

As proposed, CSMC Rule 80-1-20-93(a)(1) requires that maximum water surface elevations for all dams and embankments constructed of coal processing waste or intended to impound such waste shall be determined in accordance with Practice Standard 378. However, SCS limits the use of Practice Standard 378 to ponds (1) that are located where failure of the dam will not result in loss of life, damage to homes, commercial or industrial buildings, main highways, or railroads, or in the interruption of public utilities, (2) whose product of effective height of dam times storage capacity is less than 3000, or (3) the effective height of the dam is 35 feet or less (Scope, Practice Standard 378, Ponds, October, 1978, pg. 1). Thus, SCS does not deem Practice Standard 378 appropriate for calculating the maximum water surface elevations of ponds in high hazard locations or for the largest ponds that meet the size or other requirements at 30 CFR 77.216(a). Some dams or embankments constructed of coal processing waste or intended to impound such waste that meet the criteria of 30 CFR 77.216(a) may be of sufficient size that the product of their effective dam height and storage capacity would exceed 3000. According to SCS, the provisions of Practice Standard 378 are not adequate for such structures.

Further, prior to February 26, 1991 (56 FR 7806, 7810), New Mexico's approved program required maximum water surface elevations for dams and embankments constructed of coal processing waste or intended to impound such waste and that meet the size criteria of 30 CFR 77.216(a) to be determined according to SCS Technical Release No. 60, "Earth Dams and Reservoirs," June 1976. Under these previous New Mexico rules, the requirements of Practice Standard 378 could be applied only to dams and embankments not meeting the size criteria of 30 CFR 77.216(a).

Because proposed CSMC Rule 80-1-20-93(a)(1) would allow the procedures of SCS Practice Standard 378 to be used for determining the maximum water surface elevations for dams and embankments constructed of coal processing waste or intended to impound such waste that are outside the Practice's stated scope of applicability with regard to size and to potential hazards related to the structure's location, the Director finds that proposed CSMC Rule 80-1-20-93(a)(1) is less effective than the corresponding Federal regulations at 30 CFR 816.84(a)(1) and 817.84(a)(1). Accordingly, the Director does not approve proposed CSMC Rule 80-1-20-93(a)(1).

(b) CSMC Rule 80-1-20-93(c), Storage Design

New Mexico proposed to revise CSMC Rule 80-1-20-93(c) to require that dams or embankments constructed of or impounding coal processing waste shall be designed, constructed, and maintained so that at least 90 percent of the water stored during the design precipitation event shall be removed within a 10-day period. The counterpart Federal regulations at 30 CFR 816.84(e) and 817.84(e) require that such structures be designed so that at least 90 percent of the water stored during the design precipitation event shall be removed within a 10-day period. The Federal regulations at 30 CFR 816.84(f) and 817.84(f) require that at least 90 percent of the water stored in such structures during the design precipitation event must actually be removed within a 10-day period following the design precipitation event. New Mexico has proposed to combine the requirements of 30 CFR 816.84 (e) and (f) and 817.84 (e) and (f) into one rule. The Director finds that proposed CSMC Rule 80-1-20-93(c) is no less effective than the Federal regulations at 30 CFR 816.84 (e) and (f) and 817.84 (e) and (f) and approves it.

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

At 30 CFR 931.16(a), the Director previously required New Mexico to revise its program to require protection of threatened and endangered species from underground mining activities. New Mexico proposed to revise CSMC Rule 80-1-20-97 (b) and (c) to prohibit operators from conducting surface coal mining operations that are likely to jeopardize the continued existence of endangered or threatened species and their habitats, including bald and golden eagles, their nests, and eggs. The

prohibition would extend to threatened and endangered species listed by the "New Mexico Energy, Minerals and Natural Resources and Game and Fish Department" in addition to those listed by the Secretary of the Interior. The corresponding Federal regulations at 30 CFR 816.97 (b) and (c), and 817.97 (b) and (c) prohibit operators from conducting, respectively, "surface mining activities" or "underground mining activities" that are likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the Interior and their habitats, including bald and golden eagles, their nests, and eggs.

New Mexico's proposed CSMC Rules 80-1-20-97 (b) and (c) differ from the Federal counterparts in three ways. First, the Federal definitions of "surface mining activities" and "underground mining activities" at 30 CFR 701.5 include reclamation activities in addition to mining activities. At CSMC Rule 80-1-1-5, New Mexico's definition of "surface coal mining operations" includes activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground coal mine. The definition does not include reclamation operations as an activity of "surface coal mining operations." Therefore, New Mexico's use of the term "surface coal mining operations" in proposed CSMC Rule 80-1-20-97 (b) and (c) does not extend the protection of threatened and endangered species to areas disturbed solely by the conduct of reclamation operations. Because "surface mining activities" and "underground mining activities," as defined at 30 CFR 701.5, include reclamation operations in addition to mining operations, the effect of the use of these terms in 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c) is to require protection of threatened and endangered species from both mining operations and reclamation operations.

Second, New Mexico proposed to prohibit surface coal mining operations that are likely to jeopardize the continued existence of endangered or threatened species listed by the "New Mexico Energy, Minerals and Natural Resources and Game and Fish Department" in addition to those listed by the Secretary of the Interior. The corresponding Federal regulations at 30 CFR 816.97(b) and 817.97(b) require protection of species listed by the Secretary, but do not prohibit the protection of other species. Therefore, New Mexico's proposed inclusion of additional species, while not required,

does not render the proposed rule less effective than the Federal requirements.

Third, the Federal regulations at 30 CFR 816.97(b) and 817.97(b) prohibit surface or underground mining activities that are likely to affect species listed by the Secretary of the Interior as threatened and endangered species in either of two ways: (1) by jeopardizing the continued existence of these species or (2) by causing destruction or adverse modification of the species' designated critical habitats. The beginning portion of the first sentence of proposed CSMC Rule 80-1-20-97(b) clearly prohibits mining activities that are likely to jeopardize the continued existence of listed species; but, because of its grammatical structure, the remainder of the sentence is less clear. OSM interprets the sentence as prohibiting the destruction or adverse modification of designated critical habitats of threatened or endangered species by surface and underground mining activities. However, OSM recommends that New Mexico revise the rule in a future amendment and insert the word "or" between the words "Department" and "which" so that the sentence reads " * * * Game and Fish Department or which are likely to result * * * "

Because New Mexico's use of the term "surface coal mining operations" in proposed CSMC Rules 80-1-20-97 (b) and (c) does not extend the protection of threatened and endangered species to areas disturbed by the conduct of reclamation operations, the Director finds that proposed CSMC Rules 80-1-20-97 (b) and (c) are less effective than the corresponding Federal regulations at 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c) and does not approve them. Therefore, New Mexico has not satisfied the required amendment at 30 CFR 931.16(a) and the required amendment remains outstanding.

16. CSMC Rule 80-1-20-116, Revegetation Standards for Success

(a) CSMC Rule 80-1-20-116(a), Standards for Success and Measuring Techniques

New Mexico's existing CSMC Rule 80-1-20-116(a) is referenced by several of New Mexico's proposed rules concerning revegetation success standards. It requires that (1) success of revegetation be measured by techniques approved by the Director of MMD after consultation with appropriate State and Federal agencies, and (2) comparison of ground cover and productivity may be made on the basis of (a) referenced areas, (b) technical guidance procedures published by the U.S. Department of Agriculture (USDA), or other acceptable

techniques approved by the Director, or (c) historic records in accordance with CSMC Rule 80-1-8-19(b). CSMC Rule 80-1-20-116(a) also requires that management of a reference area shall be comparable to the management practices required for the approved postmining land use of the permit area.

The Federal regulations at 30 CFR 816.116(a) and 817.116(a) require, among other things, that success of revegetation shall be judged on the general revegetation requirements of 30 CFR 816.111 and 817.111. These revegetation requirements pertain to diversity, permanence, seasonality, regenerative capacity and compatibility with the postmining land use. The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

New Mexico's existing CSMC Rules 80-1-20-111 and 112 are no less effective than the Federal regulations at 30 CFR 816.111 and 817.111. However, New Mexico's CSMC Rule 80-1-20-116(a) does not reference its rules at CSMC 80-1-20-111 and 112, and therefore does not require that the success of revegetation be based on the general revegetation requirements of those rules. Instead it requires that standards for success of revegetation consider only productivity and ground cover. Further, CSMC Rule 80-1-20-116(a) states that comparison of ground cover and productivity may be made on the basis of technical guidance procedures published by the USDA; however, because no specific citations are provided, it is not clear whether these technical guidance procedures are measuring techniques or criteria for establishing technical standards. CSMC Rule 80-1-20-116(a) also requires that the methods for measuring revegetation success be approved by the Director of MMD after consultation with appropriate State and Federal agencies; it does not require that all standards of success and measuring techniques be approved by the Director of OSM, i.e., included in an approved regulatory program.

For these reasons, the Director finds that CSMC Rule 80-1-20-116(a) is less effective than 30 CFR 816.116(a) and (a)(1) and 817.116(a) and (a)(1). The Director approves it but requires that New Mexico revise CSMC Rule 80-1-20-116(a) to (1) reference CSMC Rules 80-1-20-111 and 112, (2) identify the specific technical guidance materials published by the USDA, and (3) require that all standards for success and

measuring techniques also be approved by the Director of OSM for inclusion in the approved program.

(b) CSMC Rule 80-1-20-116(b)(1), Revegetated Area Ground Cover and Productivity

New Mexico's proposed CSMC Rule 80-1-20-116(b)(1) requires that ground cover and productivity of living plants on the revegetated area within the permit area shall be equal to the ground cover and productivity of living plants on the approved reference area or to the standards obtained using other techniques approved by the Director of MMD. In addition, New Mexico proposed to delete from CSMC Rule 80-1-20-116(b)(1) the following exceptions to the requirement that the period of extended responsibility begin after the last year of augmented seeding, fertilizing, or irrigation: (1) interseeding to establish diversity with species of a different aspection from the original seed mixture and (2) supplemental fertilization.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program. The Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1) require that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding only husbandry practices that are approved in accordance with 30 CFR 816.116(c)(4) and 817.116(c)(4).

New Mexico's proposed deletion of interseeding and supplemental fertilization as exceptions to activities that would restart the responsibility period at CSMC Rule 80-1-20-116(b)(1) is no less effective than the Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1). However, because New Mexico's proposed rule (1) does not require that all success standards and sampling techniques be approved by the Director of OSM and (2) is not inclusive of "other work" in addition to augmented seeding, fertilizing, and irrigation, New Mexico's proposed rule at CSMC Rule 80-1-20-116(b)(1) is less effective than the Federal regulations at 30 CFR 816.116(a)(1) and (c)(1) and 817.116(a)(1) and (c)(1). The Director approves the proposed revision of CSMC Rule 80-1-20-116(b)(1), but requires that New Mexico further revise it to require that (1) all revegetation success standards and measuring techniques be approved by the Director

of OSM as well as the Director of MMD and (2) the period of extended responsibility begin after the last year of augmented seeding, fertilizing, irrigation, or other work.

(c) CSMC Rule 80-1-20-116(b)(3), Evaluation of Ground Cover, Production, and Stocking

New Mexico proposed at CSMC Rule 80-1-20-116(b)(3) to delete the existing paragraph and replace it with the requirements that (1) standards for success shall include criteria representative of unmined lands under proper management in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking, (2) ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard, and (3) the sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). In addition, New Mexico proposed to recodify CSMC Rules 80-1-20-116(b)(3)(i) through (iv) as CSMC Rules 80-1-20-116(b)(4) through (b)(7).

With the exception of the phrase "under proper management," New Mexico's proposed rule is substantively identical to the Federal regulation at 30 CFR 816.116(a)(2). The phrase "under proper management" ensures that the success criteria would not be representative of unmined lands that were in a degraded condition. Therefore, the Director finds that New Mexico's proposed CSMC Rule 80-1-20-116(b)(3) is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) and approves it.

(d) CSMC Rule 80-1-20-116(b)(6), Revegetation Success Standards for Cropland

New Mexico proposed at CSMC Rule 80-1-20-116(b)(6) to delete exceptions to the requirement that cropland production from the mined area be equal to or greater than that of the approved standard for the last two consecutive growing seasons of the 5- or 10-year responsibility period. The deleted exceptions allowed the Director of MMD to modify the length of the period of responsibility for revegetation success if a contract between the operator and the postmining land user is entered into or already exists.

The Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2) require for areas developed for cropland that production on the revegetated area be at least equal to that of a reference area or

other success standards. The Federal regulations at 30 CFR 816.116(c)(3) and 817.116(c)(3) require that vegetation parameters required in 30 CFR 816.116(b) and 817.116(b) shall equal or exceed the approved success standard for at least the last 2 consecutive years of the responsibility period. The Federal regulations at 30 CFR 816.116 and 817.116 do not allow for exceptions to the length of the responsibility period for revegetation success.

New Mexico's proposed revegetation success standards for cropland production are substantively identical to those in the Federal regulations.

Therefore, the Director finds that New Mexico's proposed CSMC Rule 80-1-20-116(b)(6) is no less effective than the Federal regulations at 30 CFR 816.116(b)(2) and (c)(3) and 817.116(b)(2) and (c)(3) and approves it.

(e) CSMC Rule 80-1-20-116(b)(7), Determination of Revegetation Success on Areas To Be Developed for Fish and Wildlife Management or Forest Land

New Mexico proposed to revise CSMC Rule 80-1-20-116(b)(7) to require, among other things, that ground cover shall not be less than that required to achieve the approved postmining land use on areas to be developed for fish and wildlife management or forest land. The Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii) require that ground cover shall not be less than that needed to achieve the approved postmining land use on areas to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products.

New Mexico's proposed requirement for ground cover on lands to be developed for fish and wildlife management or forest land is substantively identical to the Federal regulations. However, New Mexico does not have revegetation success requirements for ground cover on lands to be developed for recreation or shelterbelts. For this reason, the Director finds that New Mexico's proposed revision of CSMC Rule 80-1-20-116(b)(7) is less effective than the Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii). The Director approves proposed CSMC Rule 80-1-20-116(b)(7) but requires New Mexico to further revise it to address ground cover requirements on lands to be developed for recreation and shelterbelts.

(f) CSMC Rule 80-1-20-116(d), Determination of Revegetation Success for Areas 40 Acres or Less in Size

New Mexico proposed to delete in its entirety existing CSMC Rule 80-1-20-

116(d) that allowed for exceptions to the revegetation success standards and the period of responsibility on mine plan areas of 40 acres or less. The Federal regulations at 30 CFR 816.116 and 817.116 do not provide for exceptions to revegetation success standards and responsibility periods based on the size of the surface coal mining and reclamation operation. Therefore, the Director finds that New Mexico's proposed deletion of CSMC Rule 80-1-20-116(d) is no less effective than the Federal regulations at 30 CFR 816.116 and 817.116 and approves it.

17. CSMC Rules 80-1-20-117, Revegetation Success Standards for Trees and Shrubs

(a) CSMC Rule 80-1-20-117 (a), (b)(1), and (b)(2), Trees and Shrubs Stocking for Forest Land

New Mexico proposed a new paragraph at CSMC Rule 80-1-20-117(a) that requires, on commercial and noncommercial forest lands at the time of bond release, at least 80 percent of all trees and shrubs used to determine revegetation success to have been in place for at least 60 percent of the applicable minimum period of responsibility. New Mexico also proposed to recodify existing CSMC Rules 80-1-20-117 (a) through (c) as CSMC Rules 80-1-20-117 (b) through (d).

CSMC Rules 80-1-20-117 (b)(1) and (b)(2) address performance standards for stocking of woody species on commercial and noncommercial forest lands including the requirements that a countable tree or shrub be in place at least 2 growing seasons and be alive and healthy.

The Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) apply to land developed for fish and wildlife habitat, recreation, shelterbelts, or forest products and require that (1) trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use, (2) trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons, and (3) at the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility.

The existing title for CSMC Rule 80-1-20-117 is misleading because it refers only to forest land whereas CSMC Rule 80-1-20-117(d) addresses requirements for areas where woody plants are used

for wildlife management, recreation, and shelterbelts as well as forest uses. OSM recommends that in a future amendment New Mexico revise the title to accurately indicate all subjects of the rule.

With two exceptions, New Mexico's proposed revegetation success standards at CSMC Rules 80-1-20-117 (a), (b)(1), and (b)(2) are substantively identical to the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii). The exceptions are that these proposed standards (1) do not also apply to lands developed for use as fish and wildlife habitat, recreation, and shelterbelts, and (2) lack the requirement that trees and shrubs used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use.

For these reasons, the Director finds that New Mexico's proposed CSMC Rules 80-1-20-117 (a), (b)(1), and (b)(2) are less effective than the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii). The Director approves CSMC Rules 80-1-20-117 (a), (b)(1), and (b)(2) but requires that New Mexico further revise CSMC Rules 80-1-20-117 (a) and (b) to (1) require that they apply to land developed for use as fish and wildlife habitat, recreation, and shelterbelts and (2) include the requirement that trees and shrubs used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use.

(b) CSMC Rule 80-1-20-117(b)(3), Areas Exempt From a Stocking Requirement

New Mexico proposed at CSMC Rule 80-1-20-117(b)(3) to revise the exception to stocking requirements on forest lands for rock areas, permanent roads, and surface water drainage ways on the revegetated area by clarifying that the rock areas must replace similar natural features. Although there is no direct Federal counterpart, the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that revegetation success standards shall include criteria representative of the unmined lands in the area being reclaimed. Therefore, the Director finds that the proposed clarification of CSMC Rule 80-1-20-117(b)(3) is consistent with the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) and approves it.

(c) CSMC Rules 80-1-20-117(c) and (d), Performance Standards for Areas Where Woody Plants Are Used for Commercial Forest Land and for Wildlife Management, Recreation, Shelter Belts, or Forest Uses Other Than Commercial Forest Land

New Mexico's rules set separate minimum performance standards for areas used for (1) commercial forests at CSMC Rule 80-1-20-117(c) and (2) wildlife management, recreation, shelterbelts, or forest uses other than commercial forest land at CSMC Rule 80-1-20-117(d). The Federal regulations do not distinguish between various types of forest products, but at 30 CFR 816.116(b)(3) and 817.116(b)(3) they address stocking and ground cover standards for areas to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products.

(i) CSMC Rule 80-1-20-117(c), *Performance Standards for Areas Where Woody Plants Are Used for Commercial Forest Land*. CSMC Rule 80-1-20-117(c)(1) requires that the minimum stocking of trees or shrubs shall be determined by the State Forester; however, it is not clear whether the stocking rate will be determined by the State Forester on a permit specific or program-wide basis as required by 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i).

CSMC Rule 80-1-20-117(c)(2) requires that 75 percent of the countable trees or shrubs be commercial tree species. As discussed in finding No. 17(a) above, the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) require that the trees and shrubs used and the planting arrangement shall have utility for the approved postmining land use. Planting arrangements for commercial forests will be dictated by the stocking requirement. Therefore, both the stocking rate and the planting arrangement on commercial forest land would be approved by the agency responsible for the administration of forest lands.

CSMC Rule 80-1-20-117(c)(3) references CSMC Rules 80-1-20-116(b)(3)(iv) and 80-1-20-117(a) for procedures used to determine the number of trees and shrubs and ground cover. In this amendment, New Mexico proposed to recodify CSMC Rules 80-1-20-116 and 117 so that paragraphs 20-116(b)(3)(iv) and 20-117(a) are now, respectively, 20-116(b)(7) and 20-117(b).

CSMC Rule 80-1-20-117(c)(4) requires that at the time of bond release, the permittee shall demonstrate that the stocking of trees and shrubs and the

ground cover satisfy CSMC Rules 80-1-20-116(b)(7) and 80-1-20-117(d)(1). CSMC Rule 80-1-20-116(b)(7) requires that stocking meet the standard described in CSMC Rule 80-1-20-117, and CSMC Rule 80-1-20-117(d)(1) requires agency approval for baseline inventory sampling methods. The appropriate bond release success standards for stocking and ground cover are found at New Mexico's proposed CSMC 80-1-20-117(d)(2).

The Director finds that CSMC Rule 80-1-20-117(c) is less effective than the Federal requirements at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Director approves it but requires that New Mexico revise (1) CSMC Rule 80-1-20-117(c)(1) to clarify whether the stocking rate for commercial forest land will be determined by the State Forester on a permit-specific or program-wide basis, (2) CSMC Rule 80-1-20-117(c)(3) to reference the correct rules for procedures to determine the number of trees and shrubs and ground cover on commercial forest land, and (3) CSMC Rule 80-1-20-117(c)(4) to reference CSMC Rule 80-1-20-117(d)(2) for the appropriate bond release success standards for stocking and ground cover.

(ii) CSMC Rule 80-1-20-117(d), *Performance Standards for Areas Where Woody Plants Are Used for Wildlife Management, Recreation, Shelter Belts, or Forest Uses Other Than Commercial Forest Land*. New Mexico proposed to revise CSMC Rule 80-1-20-117(d)(1) to require consultation with and approval by both the State Forester and the Department of Game and Fish concerning methods for conducting an inventory of trees, half-shrubs, and shrubs to comply with the requirements of CSMC Rules 80-1-8-19 and 80-1-20-116(a). The inventory required by proposed CSMC Rule 80-1-20-117(d)(1) is a premining inventory for baseline data. There is no counterpart Federal regulation requiring OSM or other agency approval for premining sampling methods.

New Mexico proposed to revise CSMC Rule 80-1-20-117(d)(2) to require that the stocking of trees, half-shrubs, shrubs, and the ground cover shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement and shall be approved by the appropriate State agency responsible for the administration of forestry and wildlife programs on a permit specific basis. The proposed revisions at CSMC Rule 80-1-20-117(d)(2) are substantively identical to the counterpart Federal regulations at 30 CFR 816.116(b)(3)(i) and

817.116(b)(3)(i), which require that minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after program-wide or permit-specific consultation and approval with the State agencies responsible for the administration of forestry and wildlife programs. However, New Mexico's CSMC Rule 80-1-20-117(d)(2) incorrectly refers to CSMC Rule 80-1-20-116(a) for (1) production and ground cover success standards and (2) the responsibility period. CSMC Rule 80-1-20-116(b) is the correct reference for both of these subjects.

For the reasons discussed above, the Director finds New Mexico's proposed revisions of (1) CSMC Rule 80-1-20-117(d)(1) are not inconsistent with the Federal regulations, and (2) CSMC Rule 80-1-20-117(d)(2), with the exception of the incorrect cross reference to CSMC Rule 80-1-20-116(a), are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Director approves proposed CSMC Rules 80-1-20-117(d)(1) and (d)(2) but requires that New Mexico correct the reference at CSMC Rule 80-1-20-117(d)(2) regarding success standards and periods of responsibility for revegetation success.

New Mexico's existing CSMC Rule 80-1-20-117(d)(3)(i) requires that upon expiration of the responsibility period, the permittee must demonstrate that the reestablished woody plants are equal to or greater than 90 percent of the minimum stocking requirements for live woody plants of the same life form ascertained pursuant to CSMC Rule 80-1-20-117(a) with 80 percent statistical confidence. New Mexico's proposed CSMC Rule 80-1-20-116(b)(3) and the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require, among other things, that the sampling techniques for measuring success shall use a 90-percent statistical confidence interval. In addition, New Mexico's CSMC Rule 80-1-20-117(d)(3)(i) refers to CSMC Rule 80-1-20-116(a) for (1) production and ground cover success standards and (2) the responsibility period whereas CSMC Rule 80-1-20-116(b) is the correct reference for both of these subjects. For the reasons discussed above, the Director finds that New Mexico's existing CSMC Rule 80-1-20-117(d)(3)(i) is less effective than 30 CFR 816.116(a)(2) and 817.116(a)(2). To the extent that it allows the permittee to use an 80-percent statistical confidence interval for demonstrating revegetation success for woody plants, the Director does not approve CSMC Rule 80-1-20-117(d)(3)(i). The Director

requires that New Mexico revise CSMC Rule 80-1-20-117(d)(3)(i) to (1) require that the sampling technique used to measure revegetation success use a 90-percent confidence interval and (2) refer to the correct CSMC rules regarding the success standards and the period of responsibility for revegetation success.

18. CSMC Rule 80-1-20-121(a), Subsidence Control, General Requirements

New Mexico proposed to revise CSMC Rule 80-1-20-121(a) to require, among other things, that an operator prevent subsidence from causing material damage to structures and facilities to the extent technologically and economically feasible. The counterpart Federal regulation at 30 CFR 817.121(a) requires that an operator must adopt measures to prevent subsidence from causing material damage to the extent technologically and economically feasible. New Mexico's proposed rule limits to "structures and facilities" the operator's obligation to prevent subsidence-related material damage. The Federal regulation contains no such limitation and requires the operator to adopt measures that prevent any subsidence-related material damage, including damage to surface lands, not just material damage to "structures and facilities."

For this reason, the Director finds that proposed CSMC Rule 80-1-20-121(a) is less effective than the Federal requirements at 30 CFR 817.121(a) does not approve it to the extent that it includes the phrase "to structures and facilities."

19. CSMC Rule 80-1-20-124, Subsidence, Control, Surface Owner Protection

New Mexico proposed to revise CSMC Rule 80-1-20-124 to require that a person who conducts underground mining that results in subsidence that causes material damage to structures and facilities or reduces the value or reasonably foreseeable value of the surface lands shall, with respect to each surface area affected by subsidence, compensate the owner.

The counterpart Federal regulations at 30 CFR 817.121 (c)(1) and (c)(2) require an operator to (1) correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence, and (2) to the extent required under applicable provisions of State law, correct material damage

resulting from subsidence caused to any structures or facilities either by repairing the damage or compensating the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. In addition, SMCRA as amended by the Energy Policy Act of 1992, obligates an operator to repair or compensate the owner without regard to limitations imposed by State laws, for subsidence-related material damage incurred after October 24, 1992, to occupied residential dwellings, structures related thereto, and noncommercial buildings.

The Federal requirements consist of three separate requirements for correcting material damage caused by subsidence. First, damaged land must be restored to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence. The owner cannot be compensated instead of repairing the land and the extent of the repair cannot be limited to the extent of the operator's liability, or lack thereof, under State law. Second, subsidence-related damage to structures and facilities must either be repaired or the owner fully compensated for the damage, as required under applicable provisions of State law. Thus, material damage to structures and facilities must be remedied only if the operator is liable under State law (52 FR 4860, 4864, February 17, 1987). Third, damage to occupied residential dwellings, structures related thereto, and noncommercial buildings occurring after October 24, 1992, must either be repaired or the owner compensated in full. The repair or compensation for damage to these structures and facilities cannot be limited to the operator's liability, or lack thereof, under State law.

New Mexico has proposed to remove the limiting phrase "as provided for by applicable State law" from CSMC Rule 80-1-20-124. Therefore, New Mexico's proposed rule would require that operators compensate owners in full for subsidence-related material damage to structures and facilities. On this point, proposed CSMC Rule 80-1-20-124 is not inconsistent with the Federal requirements, but it is inconsistent with New Mexico's proposed CSMC Rule 80-1-9-39(c) that requires an application to include a description of measures to be taken as required under State law and in accordance with sections CSMC Rule 80-1-20-121 and 124 to mitigate or remedy subsidence-related damage to structures and facilities. In addition, proposed CSMC Rule 80-1-20-124 does not require, as the Federal requirements do, (1) that damaged land be restored to

presubsidence conditions, (2) that the owner be provided with the option to have subsidence-related damage to structures and facilities repaired instead of receiving compensation, or (3) that subsidence-related damage occurring after October 24, 1992, to occupied residential dwellings, structures related thereto, and noncommercial buildings must either be repaired or the owner compensated in full regardless of the extent of operator liability under State law.

For these reasons, the Director finds that proposed CSMC Rule 80-1-20-124 is less effective than the Federal regulations at 30 CFR 817.121(c). The Director does not approve CSMC Rule 80-1-20-124 and requires New Mexico to further revise it to (1) require an operator to correct, by restoring the land, any material damage resulting from subsidence caused to surface lands, (2) provide an owner with the option to have subsidence-related damage to structures and facilities repaired instead of receiving compensation, (3) require an operator to either repair or compensate the owner in full regardless of the extent of operator liability under State law for any subsidence-related damage occurring after October 24, 1992, to occupied residential dwellings, structures related thereto, and noncommercial buildings, and (4) remove the inconsistency with proposed CSMC Rule 80-1-9-39(c) with regard to limiting to the extent required under State law, an operator's obligation to remedy subsidence-related material damage to structures and facilities.

20. CSMC Rule 80-1-20-150, Roads, General

(a) CSMC Rule 80-1-20-150(a)(2)(i)

New Mexico proposed at CSMC Rule 80-1-20-150(a)(2)(i) to exclude from classification as a primary road, those roads located within coal spoil and "coal processing waste disposal areas." The corresponding Federal regulations at 30 CFR 816.150(a)(2) and 817.150(a)(2) provide no such exclusion. However, the Federal definition of "road" at 30 CFR 701.5 excludes from regulation as roads, ramps and routes of travel within spoil and "coal mine waste disposal areas."

Proposed CSMC Rule 80-1-20-150(a)(2)(i) differs from the corresponding Federal regulations at 30 CFR 816.150(a)(2) and 817.150(a)(2) by (1) use of the term "coal processing waste" instead of "coal mine waste" and (2) excluding certain roads from being classified as primary roads. On December 31, 1991 (56 FR 67520), OSM

approved New Mexico's definition of "coal processing waste" as no less effective than the Federal definition of the term "coal mine waste." Thus, New Mexico's proposed use of the term "coal processing waste" is consistent with use of the term "coal mine waste" in the Federal definition of "road" at 30 CFR 701.5.

In addition, under the Federal definition of "road," routes of travel within "coal mine waste disposal areas" are not considered to be roads and therefore do not require regulation as roads. New Mexico's definition of "road" excludes from the term, roads within the immediate mining-pit area, but it does not mention roads or routes of travel within spoil or waste disposal areas. Furthermore, proposed CSMC Rule 80-1-20-150(a)(2)(i) excludes such routes from regulation as primary roads. However, CSMC Rule 80-1-20-150(a)(3), by classifying as ancillary roads any roads not classified as primary roads, thereby requires such roads to be regulated as ancillary roads. In effect, proposed CSMC Rule 80-1-20-150(a)(2)(i) requires those portions of roads located within coal spoil and coal processing waste disposal areas to meet the requirements of CSMC Rule 80-1-20-150 (b) through (g). Although the Federal regulations do not require such roads to meet the performance standards for roads at 30 CFR 816.150 and 817.150, neither do they prohibit the States from including such requirements in their programs.

For these reasons, the Director finds that New Mexico's definition of primary road at proposed CSMC Rule 80-1-20-150(a)(2)(i) is no less effective than the Federal regulations at 30 CFR 816.150(a)(2) and 817.150(a)(2) and approves it.

(b) CSMC Rule 80-1-20-150(b)(9)

CSMC Rule 80-1-20-150(b)(9) requires for road embankments, including both ancillary and primary roads, a minimum safety factor of 1.3, except that the Director may on the basis of "factors described in Subparagraph (c) of this Section 20-150" find that a safety factor of less than 1.3 is reasonable for specific ancillary road sites. Proposed subparagraph (c) is incorrectly referenced because it addresses the use of fords or low-water crossings on ancillary roads but has no requirements that are relevant to the design and construction or reconstruction of roads. CSMC Rule 80-1-20-150(b)(9) should reference proposed subparagraph (d) (existing subparagraph (c)), which does address the design and construction or reconstruction of roads.

Because of the incorrect reference to subparagraph (c), the Director finds that CSMC Rule 80-1-20-150(b)(9) is less effective than the Federal requirements for ancillary roads at 30 CFR 816.150 and 817.150. The Director approves CSMC Rule 80-1-20-150(b)(9) but requires New Mexico to revise it to reference subparagraph (d) instead of subparagraph (c).

(c) CSMC Rule 80-1-20-150(c)

New Mexico proposed at CSMC Rule 80-1-20-150(c) to prohibit vehicular use of fords and low water crossings on ancillary roads any time there is visible surface flow in the stream. The prohibition applies only to ancillary roads and is not specifically limited by stream type. Because perennial streams by definition at CSMC Rule 80-1-1-5 flow continuously during all of the calendar year, proposed CSMC Rule 80-1-20-150(c) would prohibit any vehicular use of fords and low-water crossings on ancillary roads located in perennial streams. The Federal regulations at 30 CFR 816.151(c)(2) and (d)(6) and 817.151(c)(2) and (d)(6) address fords and low-water crossings of perennial and intermittent streams by primary roads, but there are no direct counterpart Federal regulations that specifically address fords and low-water crossings on ancillary roads.

At the time of original program approval (finding No. D.4(c) (xiv); 45 FR 86459, 86467; December 31, 1980), the Secretary of the Interior approved New Mexico's CSMC Rule 80-1-20-171, which allowed stream fords as a general practice for Class III roads. The Secretary approved the rule with the understanding that New Mexico would include in all permits a stipulation that prohibited the use of drainage grade crossings by Class III roads any time there was water flowing through the crossing. New Mexico proposed to incorporate this requirement into its current regulations pertaining to ancillary roads at CSMC Rule 80-1-20-150(c).

Although CSMC Rule 80-1-20-171 no longer exists in New Mexico's program because of the District Court's remand of OSM's road classification system (*In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144, Slip Op. at 32-36, D.D.C. May 16, 1980), the rationale that Secretary used to approve the rule is pertinent to currently-proposed CSMC Rule 80-1-20-150(c). For the former rule, New Mexico had explained that the usage of Class III roads would be limited (Administrative Record No. NM-89; finding No. D.4(c)(xiv); 45 FR 86459, 86467; December 31, 1980).

Likewise, OSM, in promulgating its regulations for ancillary roads, stated that ancillary roads could be used only infrequently or for a special reason for a short time, such as to gain access into exploration areas, water treatment facilities, and maintenance areas (47 FR 16592, 16593, April 16, 1982). Therefore, the Class III roads addressed in former CSMC Rule 80-1-20-171 are analogous to the ancillary roads addressed in currently-proposed CSMC Rule 80-1-20-150(c) to the extent that both would be used infrequently or for a short period of time.

When former CSMC Rule 80-1-20-171 was approved, the Secretary found that the rule provided a degree of protection consistent with section 515(b)(18) of SMCRA, which requires operators to refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water. For the same reasons, the Director finds that New Mexico's proposed CSMC Rule 80-1-20-150(c) pertaining to fords and low-water crossings of streams by ancillary roads, is consistent with section 515(b)(18) of SMCRA. The Director approves proposed CSMC Rule 80-1-20-150(c).

(d) CSMC Rule 80-1-20-150(e)(1)

New Mexico proposed at CSMC Rule 80-1-20-150(e)(1) to require an operator to obtain specific approval from the Director of MMD to locate any part of any road in the channel of an intermittent or perennial stream. By such approval, the Director assures that each such road location meets the requirements of the applicable hydrologic balance requirements at CSMC Rules 80-1-20-41 through 44 and 20-57.

The wording of New Mexico's proposed CSMC Rule 80-1-20-150(e)(1) is almost identical to the wording of the Federal regulations at 30 CFR 816.150(d)(1) and 817.150(d)(1). However, because of differences in the Federal and New Mexico definitions of "intermittent stream," New Mexico's proposed rule differs substantively from the corresponding Federal regulations with respect to applicability of the rule's requirements.

As discussed in finding No. 7(a), New Mexico's definition of "intermittent stream" differs from the Federal definition in that it does not include as intermittent those streams that drain watersheds 1 square mile or greater in area and that flow only in direct response to surface runoff from precipitation or from melting snow or

ice within the immediate watershed. This class of streams falls within New Mexico's definition of "ephemeral stream" at CSMC Rule 80-1-1.5. The effect of New Mexico's "intermittent stream" definition considered in conjunction with proposed CSMC Rule 80-1-20-150(e)(1) is that, contrary to the Federal requirements at 30 CFR 816.150(d)(1) and 817.150(d)(1), an operator would not have to obtain specific approval from the Director of MMD before locating a part of an ancillary or primary road in such streams.

Because proposed CSMC Rule 80-1-20-150(e)(1) does not afford the same protection to streams that drain watersheds 1 square mile or greater and that flow only in direct response to surface runoff from precipitation or melting snow or ice as is provided by the Federal regulations at 30 CFR 816.150(d)(1) and 817.150(d)(1) for such streams, the Director finds that proposed CSMC Rule 80-1-20-150(e)(1) is less effective than the corresponding Federal regulations. The Director approves CSMC Rule 80-1-20-150(e)(1) but requires New Mexico to revise CSMC Rule 80-1-20-150, or otherwise modify its program, to extend protection no less effective than the Federal standards to streams that drain watersheds 1 square mile or greater in area and that flow only in direct response to surface runoff from precipitation or melting snow or ice.

21. CSMC Rules 80-1-20-151 (b)(2) and (c)(6), Primary Roads

New Mexico proposed at CSMC Rule 80-1-20-151(b)(2) to prohibit stream fords of perennial or intermittent streams by primary roads unless they are specifically approved by the Director of MMD as temporary routes during periods of road construction. New Mexico proposed at CSMC Rule 80-1-20-151(c)(6) specific requirements for crossings of perennial and intermittent streams by primary roads.

The wording of New Mexico's proposed CSMC Rules 80-1-20-151(b)(2) and (c)(6) is almost identical to the wording of the Federal regulations at 30 CFR 816.151(c)(2) and (d)(6) and 817.151(c)(2) and (d)(6). However, because of differences in the Federal and New Mexico definitions of "intermittent stream," New Mexico's proposed rule differs substantively from the corresponding Federal regulations with respect to applicability of the rule's requirements.

As discussed in findings Nos. 7(a) and 20(d), New Mexico's definition of "intermittent stream" differs from the Federal definition in that it does not

include as intermittent those streams that drain watersheds 1 square mile or greater in area and that flow only in direct response to surface runoff from precipitation or from melting snow or ice within the immediate watershed. This class of streams falls within New Mexico's definition of "ephemeral stream" at CSMC Rule 80-1-1.5. The effect of New Mexico's "intermittent stream" definition considered in conjunction with proposed CSMC Rules 80-1-20-151(b)(2) and (c)(6) is that, contrary to the Federal requirements at 30 CFR 816.151(c)(2) and (d)(6) and 817.151(c)(2) and (d)(6), an operator (1) would not have to obtain specific approval from the Director of MMD before locating a primary road in such streams, and (2) would not have to build structures at primary road crossings of such streams.

Because proposed CSMC Rules 80-1-20-151(b)(2) and (c)(6) do not afford the same protection to streams that drain watersheds 1 square mile or greater and that flow only in direct response to surface runoff from precipitation or melting snow or ice as provided by the Federal regulations at 30 CFR 816.151(c)(2) and (d)(6) and 817.151(c)(2) and (d)(6) for such streams, the Director finds that proposed CSMC Rules 80-1-20-151(b)(2) and (c)(6) are less effective than the corresponding Federal regulations at 30 CFR 816.151(c)(2) and (d)(6) and 817.151(c)(2) and (d)(6). The Director approves CSMC Rules 80-1-20-151 (b)(2) and (c)(6), but requires New Mexico to revise CSMC Rule 80-1-20-151 or otherwise modify its program to extend protection no less effective than the Federal standards to streams that drain watersheds 1 square mile or greater in area and that flow only in direct response to surface runoff from precipitation or melting snow or ice.

22. NMSA 69-25A-31(B), 2-acre Exemption

As originally enacted, section 528(2) of SMCRA exempted from the provisions of SMCRA coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100-34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987).

On March 5, 1992, the New Mexico Legislature amended NMSMA at 69-25A-31 by repealing paragraph (B), which had exempted from the provisions of the Act surface coal extraction operations affecting 2 acres or less. This legislation removed from the

New Mexico Act the language preempted by Public Law 100-34. Removal of the acreage exemption from the New Mexico Act will prevent confusion on the part of the public, which may not be aware of the Federal preemption.

The Director finds that New Mexico's revision of section 69-25A-31 of NMSMA regarding the 2-acre exemption is no less stringent than SMCRA as amended by Public Law 100-34 and approves it.

IV. Summary and Disposition of Comments

1. Public Comments

OSM solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received from the public. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), OSM solicited comments from the Administrator of the Environmental Protection Agency (EPA) and various other Federal agencies with an actual or potential interest in the New Mexico program.

A. The Forest Service, Soil Conservation Service, and EPA, Region 6 responded that they had no comments on the proposed amendment (Administrative Record Nos. NM-688, NM-690, and NM-691).

B. The Bureau of Land Management responded that it had no questions, comments, or suggestions on the materials presented (Administrative Record No. NM-693).

C. The U.S. Army Corps of Engineers responded that it found the changes to the New Mexico coal mining and reclamation regulatory program to be satisfactory (Administrative Record No. NM-694).

D. The Bureau of Mines (BOM) provided several substantive comments (Administrative Record No. NM-692).

First, BOM stated that the phrase "precipitation of a 6-hour precipitation event" at proposed CSMC Rule 80-1-20-93(d) should instead read "precipitation of a 10-year, 6-hour precipitation event." New Mexico proposed at CSMC Rule 80-1-20-93(d) that the spillway of an impounding structure constructed of coal processing waste shall have sufficient capacity to safely pass and control "the probable maximum precipitation of a 6-hour precipitation event." The proposed design event is identical to the Federal

design event specified at 30 CFR 816.84(b)(2) and 817.84(b)(2). A structure designed to pass and control the probable maximum precipitation of a 6-hour precipitation event provides a greater measure of protection than would a structure designed to pass and control the 10-year, 6-hour precipitation event. Therefore, the Director does not require New Mexico to revise this rule in response to this comment.

Second, BOM questioned whether proposed CSMC Rule 80-1-20-97(b) would require an operator to conduct studies prior to mining and to continue those studies through the life of the operation, and stated that if so, there should be guidelines as to how the activities are conducted and by whom. Proposed CSMC Rule 80-1-20-97(b) requires the operator to report to the Director of MMD any State- or Federally-listed endangered or threatened species within the permit area "of which the operator becomes aware." Operator awareness of existing endangered and threatened species does not imply any research other than what is already required for compliance with the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). No additional studies are required by the proposed CSMC Rule 80-1-20-97(b). The requirements of proposed CSMC Rule 80-1-20-97(b) are consistent with the Federal requirements at 30 CFR 816.97(b) and 817.97(b) with respect to operator awareness of threatened and endangered species. Therefore, the Director does not require New Mexico to revise this rule in response to this comment. However, for other reasons discussed in finding No. 15, the Director is not approving proposed CSMC Rule 80-1-20-97(b).

Third, BOM commented that proposed CSMC Rule 80-1-30-11(b) appears to allow a mine to operate without a valid permit if the area mined is part of or contiguous to a valid permit. BOM further stated that when a complete application has been submitted, issuance of a permit or permit extension should not be delayed for administrative reasons.

Proposed CSMC Rule 80-1-30-11(b) establishes, for the purpose of issuing cessation orders, conditions under which the conduct of surface coal mining operations without a valid permit do not constitute significant imminent environmental harm to land, air, or water resources. On April 5, 1989, OSM published a final rule Federal Register notice promulgating Federal regulations at 30 CFR parts 701, 704, 750, 773, 774, 800, and 843 pertaining to permitting requirements for reclamation operations (54 FR

13814). The regulations were adopted to implement a consistent policy with respect to permit requirements when reclamation activities would be conducted where no coal extraction or other surface coal mining operations specified in section 701(28) of SMCRA would be taking place. In that rulemaking, the Federal regulations at 30 CFR 843.11(a)(2) concerning issuance of cessation orders were amended to clarify OSM's interpretation of SMCRA requirements concerning a permit to conduct reclamation operations where no coal extraction is taking place, and removed the requirement to renew a permit solely to conduct reclamation activities (54 FR 13814, 13819, April 5, 1989). In this proposed amendment, New Mexico has incorporated requirements at CSMC Rule 80-1-30-11(b) that are no less effective than the requirements of the corresponding Federal regulations at 30 CFR 843.11(a)(2) concerning the issuance of cessation orders. Therefore, the Director does not require New Mexico to revise its rules in response to BOM's comment.

Fourth, BOM stated that, as proposed at CSMC Rule 80-1-30-11(l), 60 days is too much time to allow for notifying a principal that a cessation order has been issued. BOM stated that "[s]omething as serious as a cessation order should not take more than 7 to 10 days to notify anyone by registered mail anywhere in the U.S. Research of ownership should not cause a problem, all ownership agreements are required notices for the permit."

New Mexico's proposed requirements at CSMC Rule 80-1-30-11(l) are substantively identical to the corresponding Federal regulations at 30 CFR 843.11(g). The primary responsibility for notifying all owners and controllers of a surface mining operation that a cessation order has been issued lies with the officials of the surface mining operation who received the cessation order and not with the regulatory authority. New Mexico's reason for notification is regulatory in nature and threefold in purpose as detailed in the preamble to the corresponding Federal regulations at 30 CFR 843.11 (54 FR 8982, 8986, March 2, 1989). First, notification to all the owners and controllers will ensure that they are aware of the violation, and that unless the violation is abated their names will be linked to the violation in the applicant/violator system. Second, where the person notified of the violation is no longer linked with the violator, notification will allow the person to immediately notify the regulatory authority that a link no longer exists. Third, where the violator

is a corporation, the notification to individual owners and controllers will also provide a basis for the assessment of an individual civil penalty under section 22(f) of New Mexico's Surface Mining Act and CSMC Rules 80-1-Part 31.

In most cases, notification would occur in less than 60 days. Notification would be attempted as soon as the permittee submits updated or corrected information as required at CSMC Rule 80-1-7-30(c) or submits in its entirety the information required at CSMC Rule 80-1-7-13(c). However, CSMC Rule 80-1-11-29(d) allows the permittee up to 30 days after a cessation order is issued to supply this information. If updated information is not received, New Mexico would send the notice to the persons currently in its records as owners or controllers. The additional 30 days allowed at proposed CSMC Rule 80-1-30-11(l) would provide New Mexico with time to find an owner or controller should the current information prove incorrect. For these reasons, the Director does not require New Mexico to take action in response to this comment.

Fifth, BOM stated that the requirements of proposed CSMC Rules 80-1-20-121 and 124 should apply to renewable resource lands in addition to structures and facilities. OSM agrees that an operator must correct any material damage to surface lands resulting from subsidence. The Federal requirements at 30 CFR 817.121(c)(1) require an operator to "[c]orrect any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence."

New Mexico's proposed CSMC Rule 80-1-20-121(a) only requires an operator to prevent subsidence from causing material damage to structures and facilities to the extent technologically and economically feasible. As discussed in finding No. 18, the Director does not approve proposed CSMC Rule 80-1-20-121(a) to the extent that it limits "to structures and facilities" an operator's responsibility to prevent subsidence-related material damage.

BOM also questioned whether, in general, an abandoned structure owned by a mining company has to be maintained and subsidence beneath it prevented. OSM has determined that this concern is outside the scope of the present rulemaking because it does not relate to a rule that New Mexico has

proposed for revision in this amendment. However, BOM is advised that OSM has proposed revisions to the Federal regulations at parts 701, 784, and 817 pertaining to underground coal mining and subsidence-caused damage to structures and facilities (58 FR 50174, September 24, 1993). Upon promulgation of these proposed revisions, the Director, in accordance with 30 CFR 732.17(e), will require the States to revise their corresponding regulations to be no less effective than the revised Federal regulations. BOM may wish to express its concerns regarding a mining company's obligation to maintain and prevent subsidence beneath an abandoned structure that it owns by commenting on the proposed Federal regulations.

E. The Mine Safety and Health Administration (MSHA) responded with three comments (Administrative Record No. NM-695).

First, MSHA stated that proposed CSMC Rule 80-1-9-25(c) would require plans developed in accordance with 30 CFR 77.216 to simply be "submitted" to the Director of MSHA without specifying how many copies of the plans must be submitted. MSHA stated that 90 CFR 77.216 specifically requires such plans to be submitted in triplicate.

The intent of New Mexico's proposed CSMC Rule 80-1-9-25(c) is to require that any plans prepared and submitted to MSHA in accordance with 30 CFR 77.216 must also be submitted to the Director of MMD as part of the permit application. The proposed rule also requires each plan for permanent and temporary impoundments to comply with all MSHA requirements at 30 CFR 77.216-1 and 77.216-2. Thus, the applicant is required to submit these plans to MSHA in the quantity specified at 30 CFR 77.216-1 and 77.216-2. Therefore, the Director does not require New Mexico to revise its rule in response to MSHA's comment.

Second, MSHA questioned whether the requirements of proposed CSMC Rule 80-1-20-93(a)(1) apply only to dams and embankments constructed of coal processing waste that do not meet the criteria of 30 CFR 77.216(a) or to all dams and embankments constructed of coal processing waste. MSHA also commented that the U.S. Soil Conservation Service publication referenced at proposed CSMC Rule 80-1-20-93(a)(1) (Practice Standard 378, "Ponds," October 1978) is "outdated."

New Mexico proposed at CSMC Rule 80-1-20-93(a)(1) minimum freeboard and maximum water elevation design requirements for all dams and embankments constructed of or intended to impound coal processing

waste. As discussed in finding No. 14(a), the Federal regulations do not specify minimum freeboard or maximum water surface elevation requirements for impoundments, or specific procedures for determining the maximum water surface elevation and adequate freeboard. Thus, at CSMC Rule 80-1-20-93(a)(1), New Mexico has proposed provisions for impoundment spillway design not required by the Federal regulations. The inclusion of additional requirements does not, of itself, render the proposed rule less effective than the Federal regulations. However, as also discussed in finding No. 14(a), proposed CSMC Rule 80-1-20-93(a)(1) inappropriately allows SCS Practice Standard 378 to be used for the determination of maximum water surface elevations of the largest of dams and embankments that meet the size criteria of 30 CFR 77.216(a) and without regard to potential hazards inherent in the location of a dam or embankment. Such use is clearly outside the intended scope of application of Practice Standard 378. Therefore, the Director is requiring New Mexico to further revise CSMC Rule 80-1-20-93(a)(1) to limit the use of SCS Practice Standard 378 to dams and embankments constructed of coal processing waste or intended to impound such waste that are within the Practice's stated scope of applicability with regard to structure size and the hazard potential inherent in the structure's location. Also, because the Federal regulations do not specify minimum freeboard or maximum water surface elevation requirements for impoundments or specific procedures for determining such values, New Mexico's reference to an older SCS technical document, Practice Standard 378, dated October 1978, is not inconsistent with the Federal requirements.

Third, MSHA stated, with regard to proposed CSMC Rule 80-1-20-93(d), that "[a]lthough not specified in the regulations, MSHA's Design Guidelines for design storm requirements are based upon hazard classification in the event of failure and size of structure with some variation for short-time unavoidable construction condition. The minimum design storm under any conditions is the Probable Maximum Flood (PMF) for high hazard sites. It is anticipated that there could be some conflict between MSHA's guidelines and (d) in the amendment."

On September 26, 1993, the Director published a final rule Federal Register notice promulgating Federal regulations at 30 CFR parts 816 and 817 pertaining to performance standards for refuse piles and impounding structures

constructed of or intended to impound coal mine waste (48 FR 44006, 44015-44025). These regulations were amended on October 27, 1988 (53 FR 43606). The regulations were adopted to supplement as well as reduce duplication of MSHA's regulations. MSHA standards that satisfy requirements under SMCRA are cross-referenced. Such cross-referenced standards are enforceable under SMCRA by the regulatory authority and become requirements of the surface coal mining regulatory program as well as MSHA's program for coal mine health and safety. In this proposed amendment, New Mexico has incorporated requirements at CSMC Rule 80-1-20-93(d) that are no less effective than the requirements of these corresponding Federal regulations concerning the design, construction, and maintenance of spillways for impounding structures constructed of or intended to impound coal mine waste. Therefore, the Director does not (1) anticipate any conflict between proposed CSMC Rule 80-1-20-93(d) and MSHA's design guidelines or (2) require New Mexico to revise its rules in response to MSHA's comment.

3. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments from the SHPO and ACHP for all amendments that may have an effect on historic properties. By letters dated September 8, 1992, the Director solicited comments from these offices (Administrative Record No. NM-687). ACHP did not respond.

The SHPO responded and expressed concern about the provisions for the coal exploration performance standards proposed at CSMC Rule 80-1-19-15 (Administrative Record No. NM-696). The SHPO stated that coal exploration has the potential for adverse effect on properties that are eligible for listing or are listed in the National Register of Historic Places and that coal exploration is one area of the coal mining regulatory process that does not adequately conform to the requirements of section 106 of the National Historic Preservation Act. Further, the SHPO expressed disappointment that the proposed changes in CSMC Rule 80-1-19-15 do not address the need for more explicit provisions on historic properties, and expressed the opinion that the exploration sections of the New Mexico's approved program will allow the destruction of historic properties without proper identification and evaluation consistent with section 106

of the National Historic Preservation Act.

The Director acknowledges the SHPO's concerns and New Mexico has been notified of these concerns by this notice and by their inclusion in the administrative record. Section 503(a) of SMCRA provides that an approved State program must carry out the provisions of SMCRA and meet its purposes through a State law that provides for the regulation of surface mining and reclamation operations in accordance with the requirements of SMCRA and through State regulations consistent with regulations issued by the Secretary pursuant to SMCRA. The Federal regulations at 30 CFR 730.5 define the terms underlined above as meaning that (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 SMCRA and (b) with regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of SMCRA.

Further, the Federal regulations at 30 CFR 730.11(b) provide that any State law or regulation that provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of SMCRA and 30 CFR chapter VII or that provides for controls and regulations for which no provision is contained in SMCRA or 30 CFR chapter VII shall not be construed to be inconsistent with SMCRA or 30 CFR chapter VII. Thus, in order to approve proposed revisions to a State regulatory program, OSM must determine that the revisions are no less effective than the corresponding Federal requirements or are no less stringent than the provisions of SMCRA. However, OSM has no authority to require a State law or regulation to be more stringent than the requirements of SMCRA or 30 CFR chapter VII.

On September 8, 1983, the Director published a final rule *Federal Register* notice promulgating Federal regulations at 30 CFR 815.15 pertaining to performance standards for coal exploration (48 FR 40636). These regulations were amended on November 8, 1988 (53 FR 45211). New Mexico has incorporated in proposed CSMC Rule 80-1-19-15(c) requirements for its rules that are no less effective than the requirements of these corresponding Federal regulations concerning the protection of historic properties during the conduct of coal exploration activities. Therefore, the Director is not

requiring New Mexico to further revise its rules in response to the SHPO's comments. However, as discussed in finding No. 12, the Director does require New Mexico to further revise its program to require that "other transportation facilities" used for coal exploration activities comply with CSMC Rules 80-1-20-150 (b) through (g).

4. EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the Administrator of EPA with the respect to provisions of the State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the changes that New Mexico proposes to its rules pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence on the proposed amendment.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and required amendments identified below, the proposed amendment as submitted by New Mexico on January 16, 1991, and as revised by it on February 6, March 26, July 22, 1991, and September 1, 1992.

As discussed respectively in finding Nos. 8(b) and (c), 10(a), 13, 14(a), 15, 18, and 19, the Director does not approve (1) CSMC Rule 80-1-9-39(c) and (d)(2), subsidence control; (2) CSMC Rules 80-1-11-20(b)(1) and (b)(3) to the extent that they reference CSMC Rule 80-1-7-14 and do not incorporate the violations review criteria at CSMC Rule 80-1-11-20(b)(1)(iii); (3) the phrase "unless these structures have been reclaimed according to Section 9-25 and positive drainage with no impoundment of water has been achieved" at CSMC Rules 80-1-20-91(c) and 20-93(e); (4) CSMC Rule 80-1-20-93(a)(1), freeboard and water-surface elevation design; (5) CSMC Rule 80-1-20-97(b) and (c), protection of threatened and endangered species, (6) CSMC Rule 80-1-20-117(d)(3)(i) to the extent that it allows the permittee to use an 80-percent statistical confidence interval; (7) the phrase "to structures and facilities" at CSMC Rule 80-1-20-121(a); and (8) CSMC Rule 80-1-20-124, subsidence control.

As discussed respectively in finding Nos. 9(a) and 10(b), the Director defers action on proposed CSMC Rules 80-1-11-17(c) and 11-20(b)(1)(ii) to the extent that these subsections provide for a presumption that a notice of violation

has been or is being corrected in the absence of a failure-to-abate cessation order. In response to litigation, the Secretary has indicated an intention to reconsider this presumption issue in the corresponding Federal regulations at 30 CFR 773.15(b)(1) and 773.20(b)(1)(ii).

As discussed respectively in finding Nos. 4, 7(a), 8(b), and (c), 9(b) and (c), 10(a), 11, 12, 16(a), (b), and (e), 17(a) and (c), 19, 20(b) and (d), and 21, the Director requires New Mexico to submit regulatory program amendments regarding (1) CSMC Rule 80-1-7-14(c), compliance information; (2) CSMC Rule 80-1-9-37(c), transportation facilities; (3) CSMC Rule 80-1-9-39(c) and (d)(2), subsidence control; (4) CSMC Rule 80-1-11-17(c) and (d) and 11-19(i), review of permit applications; (5) CSMC Rule 80-1-11-20(b)(1) and (b)(3), improvidently issued permits; (6) CSMC Rule 80-1-11-29(d), permit conditions; (7) CSMC Rule 80-1-19-15(c), performance standards for roads used in coal exploration; (8) CSMC Rule 80-1-20-116(a), (b)(1), and (b)(7), revegetation; (9) CSMC Rule 80-1-20-117(a), (b)(1), (b)(2), (c), (d)(2), and (d)(3)(i), revegetation; (10) CSMC Rule 80-1-20-124, subsidence control; (11) CSMC Rule 80-1-20-150(b)(9) and (e)(1), roads; and (13) CSMC Rule 80-1-20-151 (b)(2) and (c)(6), primary roads.

Except as noted, the Director is approving the proposed rules with the provision that they be fully promulgated in the identical form as submitted to and approved by OSM. To implement this decision, the Director amends the Federal regulations at 30 CFR part 931 codifying decisions concerning the New Mexico program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the New Mexico program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent

implementing policies, directives and other materials, and will require the enforcement by New Mexico of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Executive Order 12866

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

Regulatory Flexibility Act

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(b)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent

with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 9, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, part 931, of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

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

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

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

§ 931.15 Approval of amendments to State regulatory program.

(r) With the exception of CSMC Rules 80-1-9-39(c) and (d)(2), subsidence control; CSMC Rules 80-1-11-17(c) and 11-20(b)(1)(ii) to the extent that they allow the Director of MMD to presume, in the absence of a failure-to-abate cessation order, that a notice of violation has been or is being corrected; CSMC Rules 80-1-11-20(b)(1) and (b)(3) to the extent that they reference CSMC Rules 80-1-7-14 and do not incorporate the violations review criteria at CSMC Rule 80-1-11-20(b)(1)(iii); the phrase "unless these structures have been reclaimed according to section 9-25 and positive drainage with no impoundment of water has been achieved" at CSMC Rules 80-1-20-91(c) and 20-93(e); CSMC Rule 80-1-20-93(a)(1), freeboard and water-surface elevation design; CSMC Rule 80-1-20-97(b) and (c), protection of threatened and endangered species; CSMC Rule 80-1-20-117(d)(3)(i) to the extent that it allows the permittee to use an 80-percent statistical confidence interval; the phrase "to structures and facilities" at CSMC Rule 80-1-20-121(a); and CSMC Rule 80-1-20-124, subsidence control, the revisions to the New Mexico Coal Surface Mining Commission (CSMC) rules and to the

New Mexico Statutes Annotated (NMSA), as submitted on January 16, 1991, and as revised on February 6, March 26, and July 22, 1991, and September 1, 1992, are approved effective December 17, 1993. (The Director is deferring decision on CSMC Rules 80-1-11-17(c) and 11-20(b)(1)(ii) to the extent that they allow the Director of MMD to presume, in the absence of a failure-to-abate cessation order, that a notice of violation has been or is being corrected.) Revisions to the following rules are approved:

CSMC Rules 80-1-1-5, definition of "owned or controlled and owns and controls."

CSMC Rule 80-1-4-15(b)(2), designation of lands unsuitable for coal mining.

CSMC Rule 80-1-7-13(a) through (j), identification of interests.

CSMC Rule 80-1-7-14(a) through (d), compliance information.

CSMC Rule 80-1-9-21(c), protection of the hydrologic balance.

CSMC Rule 80-1-9-25(b), (c), and (e), reclamation plan relative to ponds, impoundments, banks, dams, and embankments.

CSMC Rule 80-1-9-37(a) through (e), transportation facilities.

CSMC Rule 80-1-9-39(b), subsidence control.

CSMC Rule 80-1-9-40, support facilities.

CSMC Rule 80-1-11-17(c), (c)(2), (c)(3), (d), and (e), review of permit applications.

CSMC Rule 80-1-11-19(i), criteria for permit approval or denial.

CSMC Rule 80-1-11-20(a), (b)(1), (b)(1)(i), (b)(1)(iii), (b)(2), (b)(2)(i), (b)(2)(ii), (b)(3), (c), and (c)(1) through (c)(4), improvidently issued permits.

CSMC Rule 80-1-11-24(a), (b), and (c), rescission procedures for improvidently issued permits.

CSMC Rule 80-1-11-29(d), conditions of permits.

CSMC Rule 80-1-19-15(c)(2) through (c)(4), performance standards for coal exploration.

CSMC Rule 80-1-19-17(a) and (b), requirements for a permit.

CSMC Rule 80-1-20-91(c), coal processing waste dams and embankments;

CSMC Rule 80-1-20-93(a), (c), (d), and (e), coal processing waste impounding structures.

CSMC Rule 80-1-20-116(a), (b)(1), (b)(3), (b)(6), (b)(7), and the deletion of (d) through (d)(3), revegetation.

CSMC Rule 80-1-20-117(a), (b), (c), (d), (d)(1), (d)(2), and (d)(3)(i), revegetation.

CSMC Rule 80-1-20-121(a), subsidence control.

CSMC Rule 80-1-20-124, subsidence control.

CSMC Rule 80-1-20-150(a)(2)(i) and (iii), (b)(9), (c), (e)(1), and (g)(5) through (g)(7), general requirements for roads.

CSMC Rule 80-1-20-151(a), (b)(2), (c)(1), and (c)(6), primary roads.

CSMC Rule 80-1-30-11(b) and (l), cessation orders.

The deletion of the statutory provision at NMSA 69-25A-31 concerning the 2-acre exemption is also approved.

3. Section 931.16 is amended by adding paragraphs (d) through (v) to read as follows:

§931.16 Required program amendments.

* * * * *

(d) By February 15, 1994, New Mexico shall submit to OSM a proposed revision for CSMC Rule 80-1-7-14(c) or otherwise modify its program to require an application to additionally include information on violations received pursuant to SMCRA, its implementing regulations, and to any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA.

(e) By February 15, 1994, New Mexico shall submit to OSM a proposed revision to CSMC Rule 80-1-9-37(c), or to its definition of "intermittent stream" at CSMC Rule 80-1-1-5, or otherwise amend its program to provide protection no less effective than the Federal provisions at 30 CFR 780.37(a)(2), (a)(3), and (a)(5) and 784.24(a)(2), (a)(3), and (a)(5) for streams that drain watersheds 1 square mile or greater in area and that flow only in direct response to surface runoff from precipitation or melting snow or ice.

(f) By February 15, 1994, New Mexico shall submit to OSM a proposed revision to CSMC Rule 80-1-9-39(c) to require that a permit application include a description of the measures to be taken to mitigate or remedy subsidence-related material damage regardless of the liability, or lack thereof, under other State laws to the land and incurred after October 24, 1992, by occupied residential dwellings, structures related thereto, and noncommercial buildings.

(g) By February 15, 1994, New Mexico shall submit to OSM a proposed revision to CSMC Rule 80-1-9-39(d) to remove from its program the exception allowed at paragraph (d)(2) to the requirements of CSMC Rule 80-1-9-39(d).

(h) By February 15, 1994, New Mexico shall submit to OSM a proposed revision to CSMC Rule 80-1-11-17(c) or otherwise modify its program to:

(1) Require, as a basis of permit denial, consideration of delinquent civil

penalties issued pursuant to all the derivative State and Federal programs encompassed by the Federal phrase "section 518 of the Act," and

(2) Prohibit issuance of a permit if an applicant or any person who owns or controls an applicant is currently in violation of SMCRA, the Federal regulations at 30 CFR chapter VII, the Federal program for Indian lands, Federal programs for States, or OSM-approved programs other than the New Mexico program.

(i) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rules 80-1-11-17(d) and 11-19(i), or otherwise modify its program to require the Director of MMD, when making a determination of whether a pattern of willful violations exists, to also consider violations received by an applicant, anyone who owns or controls the applicant, or the operator named in the application, pursuant to SMCRA, the Federal regulations at 30 CFR Chapter VII, the Federal program for Indian lands, Federal programs for States, or OSM-approved State programs other than the New Mexico program.

(j) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rules 80-1-11-20(b)(1) and (b)(3) to reference CSMC Rule 80-1-11-20(b)(1)(iii) instead of CSMC Rule 80-1-7-14.

(k) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-11-29(d), or otherwise amend its program to require the permittee, when a Federal cessation order has been issued in accordance with 30 CFR 843.11, to update the ownership and control information required at CSMC Rules 80-1-11-29(d)(1), (d)(2), and (d)(3) and submit it to the Director of MMD, or if there has been no change in the required information, to so notify the Director of MMD in writing.

(l) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-19-15(c) or otherwise amend its program to require that "other transportation facilities" used for coal exploration activities meet the requirements of CSMC Rules 80-1-20-150(b) through (g) and 20-181(a) and (b).

(m) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-20-116(a) to:

(1) Require that revegetation success be based on the general revegetation requirements at CSMC Rules 80-1-20-111 and 112,

(2) Specifically identify the technical guidance procedures published by USDA that may be used, and

(3) Require that all standards for success and measuring techniques be approved by the Director of OSM for inclusion in New Mexico's approved regulatory program.

(n) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-20-116(b)(1), or otherwise amend its program to require that:

(1) All revegetation success standards and measuring techniques be approved by the Director of OSM as well as the Director of MMD, and

(2) The period of extended responsibility begin after the last year of augmented seeding, fertilizing, irrigation, or other work.

(o) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-20-116(b)(7) to provide ground cover requirements for lands to be developed for recreation and shelterbelts.

(p) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rules 80-1-20-117(a) and (b) or otherwise amend its program to:

(1) Provide revegetation success standards for lands developed as fish or wildlife habitat, recreation areas, or shelterbelts, and

(2) Require that the trees and shrubs used in determining stocking success and adequacy of plant arrangement shall have utility for the approved postmining land use.

(q) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-20-117(c) or otherwise amend its program to:

(1) Clarify at subparagraph (c)(1) whether the stocking rate for commercial forest land will be determined by the State Forester on a permit-specific or program-wide basis,

(2) Reference at subparagraph (c)(3) the correct rules for determining the number of trees, shrubs, and ground-cover plants on commercial forest land, and

(3) Reference, at subparagraph (c)(4), CSMC Rule 80-1-20-117(d)(2) for the appropriate bond release success standards for stocking and ground cover.

(r) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-20-117(d) to:

(1) Reference at CSMC Rule 80-1-20-117(d)(2) and (d)(3)(i) the revegetation success standards and the extended period of responsibility for revegetation success at CSMC Rule 80-1-20-116(b), and

(2) Require at CSMC Rule 80-1-20-117(d)(3)(i) that sampling techniques for measuring revegetation success shall

use a 90-percent statistical confidence interval.

(s) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-20-124 to require that an operator:

(1) Repair or compensate for subsidence-related material damage to structures and facilities and

(2) Correct, by restoring the land to the extent technologically and economically feasible, any material damage resulting from subsidence caused to surface lands,

(3) Require an operator to either repair or compensate the owner in full regardless of the extent of operator liability under State law for any subsidence-related damage occurring after October 24, 1992, to occupied residential dwellings, structures related thereto, and noncommercial buildings, and

(4) Remove the inconsistency with proposed CSMC Rule 80-1-9-39(c) with regard to limiting to the extent required under State law, an operator's obligation to remedy subsidence-related material damage to structures and facilities.

(t) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80-1-20-150(b)(9) to reference subparagraph (d) of CSMC Rule 80-1-20-150 instead of subparagraph (c).

(u) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rules 80-1-20-150(e)(1), or to its definition of "intermittent stream" at CSMC Rule 80-1-1-5, or otherwise amend its program to provide protection no less effective than the Federal provisions at 30 CFR 816.150(d)(1) and 817.150(d)(1) for streams that drain watersheds 1 square mile or greater in area and that flow only in direct response to surface runoff from precipitation or melting snow or ice.

(v) By February 15, 1994, New Mexico shall submit to OSM a proposed revision to CSMC Rules 80-1-20-151(b)(2) and (c)(6), or to its definition of "intermittent stream" at CSMC Rule 80-1-1-5, or otherwise amend its program to provide protection no less effective than the Federal provisions at 30 CFR 816.151(c)(2) and (d)(6) and 817.151(c)(2) and (d)(6) for streams that drain watersheds 1 square mile or greater in area and that flow only in direct response to surface runoff from precipitation or melting snow or ice.

[FR Doc. 93-30652 Filed 12-16-93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE49

Reservists Education: Procedural Due Process and the Montgomery GI Bill—Selected Reserve; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulations (RIN 2900-AE49) which were published on Tuesday, October 5, 1993 (58 FR 51781). The regulations provided procedural due process to reservists receiving educational assistance under the Montgomery GI Bill—Selected Reserve.

EFFECTIVE DATE: October 5, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202-233-2092.

SUPPLEMENTARY INFORMATION:

Background

The final regulations which are the subject of this correction provided procedural due process for reservists receiving educational assistance under the Montgomery GI Bill—Selected Reserve. This was done by liberalizing the time limits for filing a claim for this assistance and by liberalizing the time limits for submitting a description of the mitigating circumstances surrounding a withdrawal or receipt of a nonpunitive grade.

Need for Correction

Two final regulation documents, 2900-AE49 and 2900-AF78 (58 FR 51783), were both published in the Federal Register of October 5, 1993. Both documents contained an amendment to § 21.7639(b)(1)(ii). Since the documents indicated that the amendment contained in 2900-AE49 had a later effective date than that contained in 2900-AF78, the amendment in 2900-AE49 would remain in effect from October 5, 1993. However, that amendment when taken with the amendment to § 21.7639(b)(1)(i) does not make sense. This has caused confusion among readers of the regulations. Consequently, the language of § 21.7639(b)(1)(ii) should include the language for that paragraph contained in 2900-AF78; this correction does that.

Correction of Publication

Accordingly, the publication on October 5, 1993, of the final regulations which were the subject of FR Doc. 93-24375 is corrected as follows.

Paragraph 1. On page 51781 in the third column, in § 21.7639, paragraph (b)(1)(ii) is corrected to read as follows.

§ 21.7639 Conditions which result in reduced rates.

* * * * *

(ii) Both of the following exist.

(A) There are mitigating circumstances, and

(B) The reservist submits a description of the circumstances in writing to VA either within one year from the date VA notifies the reservist that he or she must submit the mitigating circumstances, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances.

* * * * *

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 3471, 3680(a), 5101, 5113; Pub. L. 102-127) (Aug. 1, 1990)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Dated: December 10, 1993.

Marjorie M. Leandri,
Chief, Records, Reports, and Regulations
Division.

[FR Doc. 93-30812 Filed 12-16-93; 8:45 am]

BILLING CODE 8320-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT-9-1-6153; RI-5-1-6152; A-1-FRL-4807-4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut and Rhode Island; Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving Section 22a-174-30 of the Connecticut Regulations for the Abatement of Air Pollution entitled "Dispensing of Gasoline/Stage II Vapor Recovery" as a revision to the Connecticut State

Implementation Plan (SIP) for ozone. In addition, EPA is approving amendments to Rhode Island's Regulation No. 11 entitled "Petroleum Liquids Marketing and Storage" as a revision to the Rhode Island SIP. On January 12, 1993, Connecticut and Rhode Island submitted these regulations to EPA in response to the Clean Air Act, as amended in 1990, which requires all ozone nonattainment areas classified as moderate or above to adopt regulations which require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment.

EFFECTIVE DATE: This rule will become effective on January 18, 1994.

ADDRESSES: Copies of the States' submittals and EPA's technical support documents are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA. In addition, Connecticut's submittal is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630 and Rhode Island's submittal is available at Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908-5767.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565-3166.

SUPPLEMENTARY INFORMATION: On September 10, 1993 (58 FR 47707), EPA published a Notice of Proposed Rulemaking (NPR) for the States of Connecticut and Rhode Island. The NPR proposed approval of the Stage II vapor recovery regulations adopted by these states. No public comments were received on the NPR.

Under section 182(b)(3) of the amended Act, moderate and above ozone nonattainment areas were required to submit Stage II vapor recovery rules by November 15, 1992. In addition, section 184(b)(2) of the amended Act requires all areas that are located in an ozone transport region (OTR) to adopt Stage II regulations in accordance with section 182(b)(3) or measures that EPA has identified as capable of achieving equivalent reductions to section 182(b)(3) Stage II controls. These measures must be submitted within 1 year of EPA's completion of its Stage II comparability study.

The entire State of Connecticut is designated nonattainment for ozone and is classified as serious, except for the

south western portion of the State which is classified as severe. The entire State of Rhode Island is also designated nonattainment for ozone and is classified as serious. See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.307 and 81.340. In addition, both Connecticut and Rhode Island are located in the northeast ozone transport region. See CAA section 184(a). Thus, these States are required to adopt Stage II vapor recovery rules in accordance with sections 182(b)(3) and 184(b)(2) of the amended Act.

Under section 182(b)(3), moderate and above ozone nonattainment areas are required to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Section 182 (b)(3)(A) of the Act specifies that Stage II controls must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month.

Also under section 182(b)(3), EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement.¹ In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

Connecticut's Stage II Regulations

On January 12, 1993, the Connecticut Department of Environmental Protection submitted to EPA Section 22a-174-30 entitled "Dispensing of Gasoline/Stage II Vapor Recovery." This regulation prohibits the transfer of gasoline into a motor vehicle fuel tank at a dispensing facility unless a properly operating Stage II vapor recovery system is used for such transfer. This prohibition applies as follows: (1) After November 30, 1992, to any facility which begins actual construction of a stationary storage tank after November 30, 1992 and which has a throughput of 10,000 gallons or more during any calendar

¹ These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

month, (2) after May 15, 1993, to any facility for which construction commenced between November 15, 1990 and November 30, 1992 and which has a throughput of 10,000 gallons or more during any one month, (3) after November 15, 1993, to any facility for which construction commenced on or before November 15, 1990 and which has a monthly throughput of 10,000 gallons or more calculated based on the highest throughput in a calendar month during the two year period between November 30, 1990 and November 30, 1992, and (4) after November 15, 1994, to any facility for which construction commenced on or before November 15, 1990 and which has a monthly throughput of 10,000 gallons or more during any calendar month after November 30, 1992. Connecticut's regulation does not contain a separate applicability cut-off or compliance schedule for ISBMs.

The EPA has reviewed Connecticut's submittal against the statutory requirements and for consistency with EPA guidance. By this action, EPA is approving Connecticut's submittal as meeting the requirements of sections 182(b)(3) and 184(b)(2). The rationale for EPA's proposed approval is explained in the NPR (58 FR 47707) and will not be restated here. Connecticut's regulation and EPA's evaluation are detailed in a memorandum, dated April 15, 1993, entitled "Technical Support Document—Connecticut—Stage II Vapor Recovery." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document.

Rhode Island's Stage II Regulations

On January 12, 1993, the Rhode Island Department of Environmental Management (DEM) submitted to EPA Regulation No. 11, entitled "Petroleum Liquids Marketing and Storage," which had been recently amended to include new Stage II vapor recovery requirements in section 10 of the rule. Section 10 requires that all gasoline dispensing facilities constructed or substantially modified after November 15, 1992, as well as all other facilities which have or have had a monthly throughput of greater than 10,000 gallons in any one month after November 1991, install and operate Stage II vapor recovery controls. Rhode Island's regulation does not contain a separate Stage II applicability cut-off or compliance schedule for ISBMs.

The EPA has reviewed Rhode Island's submittal against the statutory requirements and for consistency with EPA guidance. By today's action, EPA is proposing to approve Rhode Island's

submittal as meeting the requirements of sections 182(b)(3) and 184(b)(2). The rationale for EPA's proposed approval is explained in the NPR (58 FR 47707) and will not be restated here. Rhode Island's regulation and EPA's evaluation are detailed in a memorandum, dated April 7, 1993, entitled "Technical Support Document—Rhode Island—Stage II Vapor Recovery." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document.

Final Action

Because EPA believes that the State of Connecticut has adopted a Stage II regulation in accordance with sections 182(b)(3) and 184(b)(2) of the Act, as interpreted in EPA's guidance, EPA is approving Section 22a-174-30 of the Connecticut Regulations for the Abatement of Air Pollution, entitled "Dispensing of Gasoline/Stage II Vapor Recovery," as meeting the requirements of sections 182(b)(3) and 184(b)(2). In addition, because EPA believes that the State of Rhode Island has also adopted a Stage II regulation in accordance with sections 182(b)(3) and 184(b)(2) of the Act, as interpreted in EPA's guidance, EPA is approving amendments to Rhode Island's Regulation No. 11, entitled "Petroleum Liquids Marketing and Storage," as meeting the requirements of sections 182(b)(3) and 184(b)(2).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As noted elsewhere in this action, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the processing procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214) and revisions to these procedures issued on October 4, 1993 in an EPA memorandum entitled "Changes to State Implementation Plan (SIP) Tables."

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant

impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the States of Connecticut and Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 5, 1993.

Paul Keough,

Acting Regional Administrator, Region I

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(62) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(62) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on January 12, 1993.

(i) Incorporation by reference

(A) Letter from the Connecticut Department of Environmental Protection, dated January 12, 1993, submitting a revision to the Connecticut State Implementation Plan.

(B) Section 22a-174-30 of the Connecticut Regulations for the Abatement of Air Pollution, entitled "Dispensing of Gasoline/Stage II Vapor Recovery," dated November 1992.

(C) Letter from the Connecticut Secretary of State's office indicating that the regulation entitled "Dispensing of Gasoline/Stage II Vapor Recovery" became effective on November 24, 1992.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

(B) Connecticut Department of Environmental Protection document entitled "Narrative of SIP Revision: Stage II Vapor Recovery," dated January 1993.

Subpart OO—Rhode Island

3. Section 52.2070 is amended by adding paragraph (c)(39) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(39) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on January 12, 1993.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management, dated January 12, 1993.

submitting a revision to the Rhode Island State Implementation Plan.

(B) Rhode Island Department of Environmental Protection, Division of Air and Hazardous Materials, Air Pollution Control Regulation No. 11, entitled "Petroleum Liquids Marketing Storage," submitted to the Secretary of State on January 11, 1993.

(C) Letter from the Rhode Island Department of Environmental Protection, dated February 10, 1993, stating that Regulation No. 11 became effective on January 31, 1993, 20 days after being filed with the Secretary of State.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

4. In § 52.2081, Table 52.2081 is amended by adding a new entry to the end of state citation "No. 11" to read as follows:

§ 52.2081 EPA-Approved Rhode Island Regulations.

* * * * *

TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/unapproved sections
No. 11	Petroleum Liquids Marketing and Storage..	1/11/93	December 17, 1993.	[Insert FR citation from published date].	(c)(39)	Regulation revised to add new Stage II vapor recovery requirements.

[FR Doc. 93-30776 Filed 12-16-93; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 52

[OH51-1-6078; FRL-4811-5]

Approval and Promulgation of Implementation Plan for Carbon Monoxide; Vehicle Inspection and Maintenance Program; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving a State Implementation Plan (SIP) revision submitted by the State of Ohio as it applies to the tailpipe test vehicle inspection and maintenance (I/M) of motor vehicles in Cuyahoga County, Ohio. This revision will reduce the emissions of carbon monoxide (CO) and volatile organic compounds by requiring motor vehicles in Cuyahoga County to be tested, and maintained if necessary, on an annual basis. This I/M program is required in order for Cuyahoga County to maintain the National Ambient Air Quality Standards for CO and ozone. This is a condition for the State's request for redesignation to attainment for CO of the current Cleveland CO nonattainment area. The approval of this SIP revision satisfies this requirement and allows the redesignation process to move forward. **EFFECTIVE DATE:** This final rulemaking becomes effective on January 18, 1994. **ADDRESSES:** Copies of the CO I/M SIP revision request and other materials related to this final rule are available for inspection during normal business hours at the following address: U.S. Environmental Protection Agency,

Region 5, Air and Radiation Division, 77 West Jackson Boulevard, (AE-17J), Chicago, Illinois 60604.

A copy of this revision to the Ohio I/M CO SIP is available for inspection at: U.S. Environmental Protection Agency, Jerry Kurtzweg (W947A), 401 M Street, SW., 6102, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Paskevich, Air Enforcement Branch, (AE-17J), U.S. Environmental Protection Agency, 77 West Jackson Blvd, Chicago, Illinois 60604, (312) 886-6084.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

This Federal Register notice describes USEPA's decision to approve a revision to the I/M portion of the Ohio CO SIP, which is designed to reduce the emissions of CO from automobiles in Cuyahoga County. This revision was proposed in the Federal Register on September 24, 1993. The USEPA sought comments on the proposal, and in particular asked for comment on three issues which USEPA believed were weaknesses in the program. These issues included: evaluation of the effectiveness of the registration denial process, operation of non-state registered and plated vehicles in the area, and permanent exemption from inspection or testing of diesel powered vehicles.

II. Public Comment/USEPA Response

There were no comments of any kind received from the public or any interested party on any part of the I/M proposal. Therefore, the USEPA is taking action to approve the Ohio I/M SIP for Cuyahoga County, Ohio. This action is being taken as part of the process for Ohio meeting the requirements for a request for

redesignation to attainment for CO of Cuyahoga County. This I/M program, implemented in January 1991, meets the requirements found in the program rules published in the Federal Register, January 22, 1981 (46 FR 7182).

III. Rulemaking Action

The USEPA is approving the I/M portion of this requested revision to the Ohio Carbon Monoxide State Implementation Plan to control CO emissions from automobiles in Cuyahoga County. The USEPA finds that this I/M program meets all the requirements of the USEPA rules published in January 22, 1981 (46 FR 7182), for SIPs in areas that needed an extension to December 1987, to attain the CO and ozone standards.

Originally classified as a Table 1 action, this action is now classified and processed as a Table 3 action, because of the lack of comments on the proposal. The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial

review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 29, 1993.

Valdas V. Adamkus,
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(95) to read as follows:

§ 52.1870 Identification of plan.

(c) * * *

(95) On October 16, 1992, the State of Ohio submitted the tailpipe test inspection and maintenance program revisions to its carbon monoxide implementation plan for Cuyahoga County.

(i) Incorporation by reference.

(A) Ohio Administrative Code: amended rules, 3745-26-01 through 3745-26-09, effective May 15, 1990, and new rules, 3745-26-10 and 3745-26-11, effective May 15, 1990.

(ii) Additional materials—remainder of the State submittal.

(A) Letter from the Director, Ohio Environmental Protection Agency, dated November 18, 1992, and additional materials.

[FR Doc. 93-30775 Filed 12-16-93; 8:45 am]

BILLING CODE 8560-50-F

40 CFR Part 52

[OR12-2-6161; FRL-4810-1]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving the revisions to the State of Oregon Implementation Plans which were submitted by the State of Oregon Department of Environmental Quality (ODEQ) for the purpose of bringing about the attainment of the National ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀). The implementation plan was submitted by ODEQ on November 15, 1991, to satisfy certain Federal Clean Air Act requirements for an approvable moderate PM₁₀ nonattainment area SIP for Grants Pass, Oregon. This action to approve this plan has the effect of making requirements adopted by the ODEQ federally enforceable by EPA.

EFFECTIVE DATE: February 15, 1994.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at the following: Jerry Kurtzweg ANR-443, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Environmental Protection Agency, Air Programs Branch, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101 and State of Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, Oregon 97204-1390.

FOR FURTHER INFORMATION CONTACT:

Rindy Ramos, Air Programs Development Section (AT-082), US Environmental Protection Agency, Region 10, Seattle, Washington 98101. (206) 553-6510.

SUPPLEMENTARY INFORMATION:

I. Background

The Grants Pass, Oregon, area was designated nonattainment for PM₁₀ and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.¹ See 56 FR 56694 (November 6, 1991). The air quality planning requirements for moderate PM₁₀ nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.² EPA has issued a

¹ The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, et seq.

² Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM₁₀ nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

"General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those state submittals containing moderate PM₁₀ nonattainment area SIP requirements. See generally 57 FR 13498 (April 16, 1992); see also 57 FR 18070 (April 28, 1992).

On March 10, 1993, EPA announced its proposed approval of the moderate nonattainment area PM₁₀ SIP for Grants Pass, Oregon (58 FR 13230-13234). In that rulemaking action, EPA described its interpretations of Title 1 and its rationale for proposing to approve the Grants Pass PM₁₀ SIP taking into consideration the specific factual issues presented.

Those states containing initial moderate PM₁₀ nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM₁₀ also apply to major stationary sources of PM₁₀ precursors except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Additional provisions are due at a later date. States with initial moderate PM₁₀ nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM₁₀ by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15, 1993, which become effective without

further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM₁₀ NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-13544).

II. Response To Comments

EPA received no comments on its March 10, 1993, (58 FR 13230-13234) Federal Register proposal to approve the Grants Pass moderate nonattainment area PM₁₀ SIP as a revision to the State of Oregon Air Quality Control Program, Volume 2, The Federal Clean Air Act State Implementation Plan (and other State Regulations).

III. This Action

Section 110(k) of the Act sets out provisions governing EPA's review and processing of SIP submittals (see 57 FR 13565-13566). In this action, EPA is approving the plan submitted to EPA on November 21, 1990, as revised by addenda submitted on November 15, 1991 (examined together as a comprehensive submittal for the area). EPA has determined that the submittal meets all of the applicable requirements of the Act. Among other things, the Oregon Department of Environmental Quality has demonstrated the Grants Pass moderate PM₁₀ nonattainment area will attain the PM₁₀ NAAQS by December 31, 1994. Note that EPA's action includes approval of the contingency measures for the Grants Pass nonattainment area.

Subsequent to the public notice proposing approval of the Grants Pass PM₁₀ SIP, EPA determined that the Oregon Revised Statute Chapter 468, as amended in 1991, failed to provide sufficient authority to ensure that the industrial source control measures contained in the Grants Pass PM₁₀ SIP could be adequately enforced. Specifically, ORS 468.126(1) provided that penalties could not be assessed against a source for permit violations unless the state first provided notice of the violation to the source, and further, if within five days, the source came into compliance or provided an adequate schedule to come into compliance in the future, no penalties could be assessed.

EPA informed the Oregon Department of Environmental Quality that this provision was unacceptable to the extent it applied to permit limits which were relied on to attain, maintain or demonstrate attainment with a NAAQS.

On September 3, 1993, the Governor of Oregon signed into law new legislation correcting this deficiency. The new law provides that the five-day advance notice provision required by ORS 468.126(1) does not apply if the

notice requirement will disqualify a state program from Federal approval or delegation. See Oregon Senate Bill 86, 1993 Session, § 3 (1993) to be codified at ORS 468.126(2)(e). Because the notice provision bars civil penalties from being imposed for certain permit violations, application of ORS 468.126(1) fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval. See section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the notice requirement would disqualify this PM₁₀ program from Federal approval. Thus, the state has acknowledged that, pursuant to ORS 468.126(2)(e), the notice provision in ORS 468.126(1) will not apply to violations of SIP requirements contained in permits, including permits containing industrial source control requirements, relied upon to attain, maintain or demonstrate attainment with a NAAQS.

IV. Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality

of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2))

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: November 11, 1993.

Gerald A. Emison,
Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(99) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *
(99) On November 21, 1990, the Director of the Department of Environmental Quality (ODEQ) submitted a State Implementation Plan for Particulate Matter, Grants Pass, Oregon, Moderate Nonattainment Area, A Plan for Attaining and Maintaining the National Ambient Air Quality Standards for PM₁₀. On November 15, 1991, the Director of ODEQ submitted an Addendum to the November 21, 1990 submittal.

(i) Incorporation by reference.
(A) November 21, 1990 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting revisions to the Oregon state implementation plan.

(B) November 15, 1991 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting revisions to the Oregon state implementation plan.

(C) State Implementation Plan for Particulate Matter, Grants Pass, Oregon Nonattainment Area, A Plan for Attaining and Maintaining the National Ambient Air Quality Standards for PM₁₀ dated November 1990, adopted by the Environmental Quality Commission on November 2, 1990 and effective on November 2, 1990.

(D) PM₁₀ Control Strategy for Particulate Matter (Addendum) Grants Pass, Oregon Nonattainment Area, A Plan for Attaining and Maintaining the National Ambient Air Quality Standards for PM₁₀ dated October 1991, adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

[FR Doc. 93-30774 Filed 12-16-93; 8:45 am]

BILLING CODE 6580-50-F

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[AZ-930-4210-06; AZA-13010]

43 CFR Public Land Order 7022**Revocation of Secretarial Order Dated June 30, 1908; Arizona**

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Secretarial Order dated June 30, 1908, insofar as it

affects the remaining 41.69 acres of National Forest System land withdrawn for use as the Payson Administrative Site. The land is no longer needed for this purpose, and the revocation is needed to accommodate a proposed land exchange under the General Exchange Act of 1922. The original withdrawal, containing 125.50 acres, has been reduced in size over the years to accommodate other uses and needs. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land is temporarily closed to mining by a Forest Service exchange proposal. The land is located within the town limits of Payson, and therefore, is not subject to mineral leasing.

EFFECTIVE DATE: January 18, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-650-0509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated June 30, 1908, which withdrew National Forest System land for use as the Payson Administrative Site, is hereby revoked insofar as it affects the remaining 41.69 acres described below:

Gila and Salt River Meridian**Tonto National Forest**

T. 10 N., R. 10 E.,

Sec. 5, lot 6, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$,

SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$,

N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$,

SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$,

W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and

W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 8, lot 1, and NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 9, lot 2.

The area described contains 41.69 acres in Gila County.

2. At 10 a.m. on January 18, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: December 6, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-30733 Filed 12-16-93; 8:45 am]

BILLING CODE 4310-32-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 625**

[Docket No. 930932-3314; I.D. 081693C]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the conservation and management measures contained in Amendment 5 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This rule allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine their summer flounder commercial quota. The intent of Amendment 5 is to provide a mechanism within the overall coastwide quota to give the states flexibility in quota management in order to respond to changes in landing patterns or emergency situations.

EFFECTIVE DATE: January 18, 1994.

ADDRESSES: Copies of Amendment 5, the environmental assessment (EA), and the regulatory impact review (RIR) are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508-281-9101.

SUPPLEMENTARY INFORMATION: The summer flounder fishery is managed under the FMP, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 625.

Amendment 5 was prepared by the Council in consultation with the ASMFC and the New England and South Atlantic Fishery Management Councils. A notice of availability for