

716). New Mexico submitted the proposed amendment in response to a February 7, 1990, letter (administrative record No. NM-563) that OSM sent to New Mexico in accordance with 30 CFR 732.17(c). New Mexico submitted the amendment with the intent of making the New Mexico Coal Surface Mining Commission (CSMC) rules consistent with the corresponding Federal regulations. New Mexico proposed new rules to implement sections 69-25A-1 through 35 of the New Mexico Surface Coal Mining Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale. The provisions of the New Mexico Coal Surface Mining Commission (CSMC) Rules 80-1 that New Mexico proposed to add are at new Chapter O, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, and include sections 34-1, scope; 34-2, definitions; 34-3, application requirements and procedures; 34-4, contents of application for exemption; 34-5, public availability of information; 34-6, requirements for exemption; 34-7, conditions of exemption and right of inspection and entry; 34-8, stockpiling of minerals; 34-9, revocation and enforcement; and 34-10, reporting requirements.

OSM announced receipt of the proposed amendment in the November 15, 1994, **Federal Register** (59 FR 58801), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM-718). Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 15, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of CSMC Rules 80-1-34-2, definition of "cumulative measurement period," and 80-1-34-9, administrative review of revocation decisions. OSM notified New Mexico of the concerns by letter dated December 20, 1994 (administrative record No. NM-724). New Mexico responded in a letter dated December 20, 1994, by submitting revisions for the two rules (administrative record No. NM-723).

Based upon the revisions to the proposed program amendment submitted by New Mexico, OSM reopened the public comment period in the December 28, 1994, **Federal Register** (59 FR 66837, administrative record No.

NM-729). The public comment period ended on January 12, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by New Mexico on October 26, 1994, and as revised by it on December 20, 1994, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

Addition of Substantive Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

New Mexico proposed the addition of the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

CSMC Rule 80-1-34-1 (30 CFR 702.1), scope,
 CSMC Rule 80-1-34-2 (30 CFR 702.5), definitions,
 CSMC Rule 80-1-34-3 (30 CFR 702.11), application requirements and procedures,
 CSMC Rule 80-1-34-4 (30 CFR 702.12), contents of application for exemption,
 CSMC Rule 80-1-34-5 (30 CFR 702.13), public availability of information,
 CSMC Rule 80-1-34-6 (30 CFR 702.14), requirements for exemption,
 CSMC Rule 80-1-34-7 (30 CFR 702.15), conditions of exemption and right of inspection and entry,
 CSMC Rule 80-1-34-8 (30 CFR 702.16), stockpiling of minerals,
 CSMC Rule 80-1-34-9 (30 CFR 702.17), revocation and enforcement, and
 CSMC Rule 80-1-34-10 (30 CFR 702.18), reporting requirements.

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

IV. Summary and Disposition of Comments

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

1. Public Comments

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

2. Federal Agency Comments

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

The Bureau of Mines responded in a telephone conversation on November 15, 1994, that it had no comments on the proposed amendment (administrative record No. NM-719).

The U.S. Army Corp of Engineers stated in letters dated November 16, 1994, and January 6, 1995, that it found the changes to be satisfactory (administrative record Nos. NM-721 and NM-730).

The U.S. Fish and Wildlife Service (the Service) provided comments in a letter dated December 1, 1994 (administrative record No. NM-722). Due to concerns of the Service about risks to fish and wildlife from selenium, mercury, and polycyclic aromatic hydrocarbons (PAH's) contamination, it recommended that the proposed amendment be revised to require permit conditions for testing and monitoring mercury, selenium, and PAH's for such mining operations that extract coal incidental to the extraction of other minerals.

The Federal regulations at 30 CFR Part 702 exclude from SMCRA regulation those mining operations that extract coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale. Because New Mexico's proposed incidental coal extraction rules are substantively identical to these corresponding Federal regulations, New Mexico's coal mining rules also do not regulate such mining operations. To the extent that the Service's comments address the mitigation of impacts of selenium, mercury, and PAH's contamination of such mining operations, they are outside the scope of New Mexico's coal mining rules. Therefore, OSM is not requiring New Mexico to revise its coal mining rules in response to the comment.

By letter dated January 25, 1995, the Mine Safety and Health Administration (MSHA) stated that the amendment had been reviewed and that it appeared there were no conflicts with the requirements of 30 CFR (administrative record No. NM-731).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to