how these three holdings affect our proposed rule. These three holdings are described below.

First, the court held that ''[f]or violations of an operation that the applicant 'has controlled' but no longer does, * * * the Congress authorized permit-blocking only if there is 'a demonstrated pattern of willful violations' '' under section 510(c) of SMCRA. *Id.* at 5. In other words, if an applicant severs its ownership or control relationship to an operation with a current violation, OSM, in general, may not consider that violation in making a permit eligibility decision under section 510(c) of the Act. Stated differently, in addition to the violation being current and ongoing, the applicant must also own or control the operation with a violation at the time of application; if the ownership or control relationship has been terminated, OSM may not deny a permit (absent a pattern of willful violations), even if the violation remains current and ongoing. *NMA* v. *DOI II*, 177 F.3d at 5. OSM may consider such past ownership or control of operations with violations only in determining whether there has been a ''demonstrated pattern of willful violations'' warranting permanent permit ineligibility under section510(c).

This holding affects 773.15(b)(3) and 773.16(a) of our proposed rule; therefore, we invite your comments on the effect of the court's ruling on these provisions.

Second, the court found that the IFR's provision requiring permit denials based on *indirect* ownership or control of operations with violations is impermissibly retroactive because our 1988 ownership and control rule imposed a ' ''new disability,' permit ineligibility, based on 'transactions or considerations already past. . . .' '' *Id.* at 8. As such, the court held that the IFR is retroactive ''insofar as it block [*sic*] permits based on transactions (violations and control) antedating November 2, 1988, the [1988] Ownership and Control Rule's effective date.'' *Id.*

However, the court explained that the IFR is not retroactive to the extent it allows permit denials when an applicant acquires control of an operation with an ongoing, pre-rule violation on or after the effective date of the 1988 ownership and control rule. *Id.* at n.12. This is so because one of the relevant transactions—assumption of control—will have occurred on or after November 2, 1988; as such, as of November 2, 1988, the applicant would be on notice that this type of transaction, which post-dates the effective date of the 1988 rule, could affect his or her eligibility to receive a permit.

This holding affects sections 773.15(b)(3) and 773.16(a) of our proposed rule; therefore, we invite your comments on the effect of the court's ruling on these provisions.

Finally, with regard to the IFR's suspension and rescission provisions relative to improvidently issued permits, the court agreed with OSM that section 201(c) of SMCRA, 30 U.S.C. 1211(c), expressly authorizes OSM to suspend or rescind improvidently issued permits. In addition to that express authority, the court also found that OSM retained ''implied'' authority to suspend or rescind improvidently issued permits ''because of its express authority to deny permits in the first instance.'' *Id.* at 9. However, the court decided that OSM may only order cessation of State-permitted operations pursuant to the procedures established under section 521 of SMCRA, 30 U.S.C. 1271. Specifically, OSM may order immediate cessation of State-permitted operations if those operations pose an ''imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm . . .'' SMCRA § 521(a)(2), 30 U.S.C. 1271(a)(2). Absent these circumstances, and after OSM complies with the ten-day notice procedure contained in 30 CFR 843.21(c), OSM may order cessation of a State-permitted operation only if it: (1) Provides a notice of violation to the permittee or his agent; (2) establishes an abatement period; (3) provides opportunity for a public hearing and (4) makes a written finding that abatement of the violation has not occurred within the abatement period. *Id.* at 9–10; SMCRA § 521(a)(3), 30 U.S.C. 1271(a)(3). This holding affects section 843.21(d) of our proposed rule; therefore, we invite your comments on the effect of the court's ruling on these provisions.

The court's holdings in the rest of the *NMA* v. *DOI II* litigation do not affect our proposed rule because either; (1) OSM prevailed on the particular issued; or (2) the issue has become moot in that our proposal does not contain a similar provision. The court decision is available from two commercial legal research services (Lexis and Westlaw), as well as from the United States Court of Appeals for the District of Columbia Circuit's website (Internet address: http://www.cadc.uscourt.gov). For your convenience, we are posting a copy of the court's decision on our website at: http//www.osmre.gov. We will also be happy to mail or fax you a hard copy of the decision at your request; please address requests to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 1, 2000.

Kathrine L. Henry,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 00–14355 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO–032–FOR]

Colorado Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado proposes revisions to rules concerning definitions; permit application requirements; comment period for revisions; requirements for permit approval or denial; and performance standards for sedimentation ponds, discharge structures, impoundments, stream buffer zones, coal exploration, and coal processing plants and support facilities not located at or near the mine site or not within the permit area for the mine. Colorado intends to revise its program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t., July 7, 2000. If requested, we will hold a public hearing on the amendment on July 3, 2000. We will accept requests to speak until 4 p.m., m.d.t., on June 22, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to James F. Fulton at the address listed below.

You may review copies of the Colorado program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive

one free copy of the amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202.

Michael B. Long, Director, Division of Minerals and Geology, Department of Natural Resources, 1313 Sherman St., Room 215, Denver, CO 80203, Telephone: (303) 866–8106.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 844–1400, extension 1424. Internet: JFULTON@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program.

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

II. Description of the Proposed Amendment

By letter dated May 12, 2000, Colorado sent us a proposed amendment to its program (administrative record No. CO–691) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado sent the amendment in response to May 7, 1986, and June 19, 1997, letters (administrative record Nos. CO–282 and CO–686) that we sent to Colorado in accordance with 30 CFR 732.17(c); required program amendment codified at 30 CFR 906.16(d) and (e); and to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Colorado proposes to:

(1) Add, at Rule 1.04(31a), a definition of ''cumulative impact area'' that means the area which includes, at a minimum, the entire projected lives through bond release of: the proposed operation; all existing operation; any operation for which a permit application has been submitted; all other operations required to meet diligent development requirements for leased federal coal, for which there is actual mine development information available;

(2) Revise, at Rule 1.04(71), the definition of land use, to clarify that all of the land uses described may include land used for support facilities which are adjacent to, or are in integral part of the land use;

(3) Delete, at Rule 1.04(115a), the definition of ''sediment treatment facilities and replace it with, at Rule 1.04(81a), a definition of 'other treatment facilities' that means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as, but not limited to, clarifiers or precipitators, that have a point source discharge and are utilized: (i) to prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or (ii) to comply with all applicable State and Federal water-qualify laws and regulations;''

(4) Add, at Rule 1.04(86a), a definition of ''permit impoundment'' that means a impoundment which is approved, and if required, by other State and Federal agencies for retention as part of the post-mining land use;

(5) Add, at Rule 1.04(93a), a definition of ''point of compliance'' that means any geographic location at which compliance with applicable ground water quality standards established by the Water Quality Control Commission must be attained and where this compliance will be demonstrated by compliance monitoring of the groundwater or by other valid means;

(6) Revise, at Rule 1.04(115), the definition of ''sedimentation pond'' to clarify that it is an impoundment used as a primary sediment control structure to remove solids from water to meet water-quality standards or effluent limitations before the water leaves the permit area;

(7) Add, at Rule 1.04(137a), a definition of ''temporary impoundment'' that means an impoundment used during surface coal mining and reclamation operations, but not approved to remain as part of the approved post-mining land use;

(8) Revise Rule 2.05.2(1) through (6), concerning water quality standards and effluent limitations, to add references to other treatment facilities;

(9) Revise Rule 2.05.3(4)(a), concerning permit application requirements, to require information concerning other treatment facilities;

(10) Revise Rule 2.05.3(4)(a)(iii), concerning permit application requirements, to (1) refer to an impoundment with a capacity of more than 100 acre-feet rather than a reservoir with a capacity of more than 1000 acre-feet, and (2) incorporate by reference the applicable requirements of the State Engineer codified at C.R.S. 37–87–105;

(11) Revise Rule 2.05.3(4)(a)(iv), concerning permit application requirements, to incorporate by reference (for sedimentation ponds or impoundments that meet or exceed the criteria of the Mine Safety and Health Administration (MSHA)), the MSHA requirements codified at 30 CFR 77.216(a), 77–216–1 and 77.216–2;

(12) Add, at Rules 2.05.3(4)(a)(v), (vi) and (vii), concerning permit application requirements, to require (1) submission of any plans that must be submitted to and approved by with the State Engineer or MSHA, (2) that all impoundments meeting the Class B or Class C criteria for dams in the Soil Conservation Service Technical Release No. 60 (TR60) comply with the requirements for impoundments that meet or exceed the size or other criteria of 30 CFR 77.216(a) (and to incorporate by reference TR60), and (3) require a stability analysis for each impoundment that either meets the Class B or Class C criteria for dams in TR60 or meets the size or other criteria of 30 CFR 77.216(a);

(13) Make editorial revisions at Rule 2.05.3(4)(b), concerning design requirements for sedimentation ponds;

(14) Revise Rule 2.05.3(8)(a)(iii), concerning permit application requirements for plans for coal mine waste and non-coal processing waste, to refer to impoundments with a capacity of 100 acre-feet rather than reservoirs with a capacity of more than 1000 acre-feet;

(15) Add Rules 2.05.3(8)(a)(v) and (vi), concerning plans for coal mine waste and non-coal processing waste, to require (1) that all impoundments meeting the Class B or Class C criteria for dams in the Soil Conservation Service TR60 comply with the requirements for impoundments that meet or exceed the size or other criteria of 30 CFR 77.216(a), and (2) require a stability analysis for each impoundment that either meets the Class B or Class C criteria for dams in TR60 or meets the size or other criteria of 30 CFR 77.216(a);

(16) Revise Rule 2.05.6(3)(b)(iv) and (iv)(A), concerning the plan for surface and ground water monitoring, to require (1) identification of points of compliance and (2) monitoring of manganese;

(17) Make editorial revisions at Rule 2.06.8(5)(b)(ii)(B), concerning underground mining activities;

(18) Revise Rule 2.07.3(3)(b) to refer to the National Resource Conservation

Service rather than the Soil Conservation Service;

(19) Revise Rule 2.07.3(3)(c) to clarify that written comments regarding technical revisions may be submitted within 10 days of the initial newspaper publication;

(20) Revise Rule 2.07.6(2)(c), concerning the assessment (for permit approval or denial) of probable cumulative impacts of all anticipated mining on the hydrologic balance, to add references to cumulative impact area and material damages;

(21) Revise Rule 4.05.6, concerning sedimentation ponds, to (1) apply the requirements to other treatment facilities and (2) simplify by reorganizing the section and removing certain requirements that are applicable to impoundments in general and are not specific to sedimentation ponds or other treatment facilities (these requirements are set forth at Rule 4.05.9 which is applicable to impoundments in general);

(22) Revise Rule 5.05.7, concerning discharge structures, to add a reference to other treatment facilities;

(23) Revise Rule 4.05.9, concerning impoundments, to (1) clarify and simplify by reorganizing and removing redundant requirements and (2) add, at Rules 4.05.9(2)(d), (e)(i), and (ii), (6), (8)(a), (10), and (21) requirements, concerning spillways, embankments, freeboard, and inspections, for impoundments meeting the Class B or Class C criteria for dams in the Soil Conservation Service TR60;

(24) Revise Rule 4.05.9, concerning impoundments, to add a new Rule 4.05.9(18) that (1) waives the requirement for quarterly inspections by a registered engineer, but requires annual inspections by a qualified person, for impoundments which are (a) not the primary sediment control for area, (b) located in reclaimed terrain to enhance the postmining land use, and (c) either completely incised or do not exceed 2 acre-feet in capacity and do not have embankments larger than five feet in height; and (2) requires that (a) the above waiver be approved and (b) such a waiver cannot be approved unless a written safety demonstration is submitted by a professional engineer which shows that the impoundments will not present any threat to human health and safety, or significant threat to the environment (all other impoundments-related rules are applicable and Colorado is required to field verify the safety demonstration and may rescind the waiver, for good cause if conditions change over time);

(25) Revise Rule 4.05.13(1), concerning ground water monitoring, to add requirements concerning monitoring points of compliance;

(26) Revise Rule 4.05.18, concerning stream buffer zones, to (1) require that no land within 100 feet, or greater distance if required, of a perennial stream, an intermittent stream, or an ephemeral stream with a drainage area greater than one square mile, by surface and underground coal mining operations, unless authorized, and (2) require, upon a waiver of buffer zone, Colorado to find that (a) surface coal mining operations will not cause or contribute to the violation of applicable water quality standards, (b) during and after mining, the water quantity and quality, and other environmental resources of the stream shall not be adversely affected, and, (c) if there will be a temporary or permanent stream channel diversion, the diversion will comply with Rules 4.05.3 and 4.05.4;

(27) Revise Rule 4.21.4(10), concerning performance standards for coal exploration, to add the requirements that coal exploration (1) include sediment control measures such as those listed in 4.05.5 or sedimentation ponds which comply with 4.05.6 and 4.05.9, and (2) if the operation has the potential to negatively impact the quality of groundwater for which quality standards have been established by the Water Quality Control Commission, be conducted so as to ensure compliance with applicable ground water standards at points of compliance which shall be established according to the provisions of 4.05.13(1); and

(28) Revise Rule 4.28.3, concerning coal processing plants and support facilities not located at or near the mine site or not within the permit area for the mine, by adding paragraph (16) that requires establishment of points of compliance, if the operation has the potential to negatively impact the quality of groundwater for which quality standards have been established by the Water Quality Control Commission.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), OSM requests your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Colorado program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Denver Field Division.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. CO–032–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844-1400, extension 1424.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., on June 22, 2000. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the

audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, 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 the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

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.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal 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. Accordingly, 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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 2000.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00–14356 Filed 6–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS NO NM–039–FOR]

New Mexico Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions pertaining to a previously proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions to New Mexico's proposed rules pertain to the definitions of ''material damage'' and''occupied residential dwelling and associated structures'' and subsidence control during underground mining. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.d.t. June 22, 2000.