

(B) Will not be disclosed to other affected parties.

(iii) If, before the 15th business day (as defined in § 4000.22 of this chapter) after PBGC has received a request under paragraph (a), PBGC receives a court order as described in paragraph (b)(2)(ii) of this section, PBGC will disclose those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code, only as provided in the order.

(3) *Timing of response.* PBGC will send the administrative record to the affected party that made the request not later than the 15th business day (as defined in § 4000.22 of this chapter) after it receives the request.

(4) *Form and manner.* PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

Issued in Washington, DC, this 13 day of November, 2008.

**Charles E.F. Millard,**  
*Director, Pension Benefit Guaranty Corporation.*

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing publication of this final rule.

**Judith R. Starr,**  
*Secretary, Board of Directors, Pension Benefit Guaranty Corporation.*

[FR Doc. E8-27350 Filed 11-17-08; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 931

[SATS Number NM-047-FOR]

#### New Mexico Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the New Mexico regulatory program (the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico is proposing additions to and revisions of the New Mexico Administrative Code (NMAC) to improve and clarify the public notification process during permitting actions, to correct outdated citations, and to comply with formatting requirements for New Mexico

administrative law. The revisions also include non-substantive editorial changes. New Mexico revised its program to provide additional safeguards, clarify ambiguities, and achieve stylistic consistency.

**DATES:** *Effective Date:* November 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Bob Postle, Branch Chief, Field Operations, Program Support Division; *Telephone:* (505) 248-5070; *Internet address:* [bpostle@osmre.gov](mailto:bpostle@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the New Mexico Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

#### I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (a)(7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.10, 931.11, 931.13, 931.15, 931.16, and 931.30.

#### II. Submission of the Proposed Amendment

By letter dated November 28, 2007, New Mexico sent us an amendment to its program (SATS number NM-047-FOR; Administrative Record No. OSM-2007-0021-0002) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment to include changes made at its own initiative.

We announced receipt of the proposed amendment in the January 11, 2008, **Federal Register** (73 FR 1983). In the same document, we opened the public comment period and provided an

opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM-2007-0021-0002). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 11, 2008. We did not receive any comments.

#### III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

##### A. Minor Revisions to New Mexico's Rules

New Mexico proposed minor wording, editorial, punctuation, grammatical, citation, stylistic, and recodification changes to the following previously approved rules at NMAC:

- 19.8.1.7.B(1); G(1); N, and R(3)—Definitions
- 19.8.2.201.B.(2)(a)—Areas Where Mining Is Prohibited or Limited
- 19.8.2.202.F—Procedures/Review by Other Agencies
- 19.8.4.401.A and B—Procedures: Initial. Processing, Record-Keeping, and Notification Requirements
- 19.8.4.402.B—Procedures: Hearing Requirements
- 19.8.5.504.B—Permit Application Filing Deadlines
- 19.8.6.601.F—General Requirements: Exploration of Less Than 250 Tons
- 19.8.6.603.B(2)—Applications: Approval or Disapproval of Exploration of More Than 250 Tons
- 19.8.6.606.B—Public Availability of Information
- 19.8.7.705.A—Permit Term Information
- 19.8.7.708—Identification of Location of Public Office for Filing of Application
- 19.8.8.801.B—General Environmental Resources Information
- 19.8.8.803.B—Geology Description
- 19.8.8.814.A, B(5), D, and D(2)—Prime Farmland Investigation
- 19.8.9.901.B(1) and B(3)—Operation Plan: Existing Structures
- 19.8.9.903.B(3)—Operation Plan: Maps and Plans
- 19.8.9.906.B(2)—Reclamation Plan: General Requirements
- 19.8.9.907.B(1)—Reclamation Plan: Protection of Hydrologic Balance
- 19.8.9.909.A(2)—Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
- 19.8.9.913—Relocation or Use of Public Roads
- 19.8.9.916—Transportation Facilities

- 19.8.9.917—Return of Coal Processing Waste to Abandoned Underground Workings
  - 19.8.10.1000.A(4)(a) and A(4)(b)—Experimental Practices in Mining
  - 19.8.10.1000.E—Experimental Practices in Mining
  - 19.8.10.1001.A, B(1)(b), and (C)—Mountaintop Removal Mining
  - 19.8.10.1002.B and C—Steep Slope Mining
  - 19.8.10.1003.A(3) and A(4)(c)—Permits Incorporating Variances From Approximate Original Contour Restoration Requirements for Steep Slope Mining
  - 19.8.10.1004.A(1), A(4), and B—Prime Farmlands
  - 19.8.10.1005.B(8)—Variances for Delay in Contemporaneous Reclamation Required in Combined Surface and Underground Mining Operations
  - 19.8.10.1006.C—Surface Coal Mining and Reclamation Operation on Areas or Adjacent to Areas Including Alluvial Valley Floors
  - 19.8.11.1100.A(3)—Public Notices of Filing of Permit Applications
  - 19.8.11.1101.A and C—Opportunity for Submission of Written Comments on Permit Applications
  - 19.8.11.1102.B(2)—Right to File Written Objections
  - 19.8.11.1103.B(4)—Hearings and Conferences
  - 19.8.11.1105.B—Review of Permit Applications
  - 19.8.11.1106.K—Criteria for Approval or Denial
  - 19.8.11.1108.C—Criteria for Permit Approval or Denial: Existing Structures
  - 19.8.11.1109.F—Permit Approval or Denial Actions
  - 19.8.11.1111.B(4)—Permit Terms
  - 19.8.11.1112.C—Conditions of Permits: General and Right of Entry
  - 19.8.13.1301.G—Permit Revisions
  - 19.8.13.1303.A(3) and B(2)—Permit Renewals: Complete Applications
  - 19.8.13.1305.A(4)—Permit Renewals: Approval or Denial
  - 19.8.13.1307.A(2)(d), B, and C(2)—Transfer, Assignment or Sale of Permit Rights: Obtaining Approval
  - 19.8.14.1401.B and D—Requirement to File a Bond
  - 19.8.14.1403.A, C, D, D(1), and D(2)—Period of Liability
  - 19.8.14.1406.C, D, E, and E(2)—General Terms and Conditions of Bond
  - 19.8.14.1407.A, B(1), and B(4)—Bond Requirements for Underground Coal Mines and Long-Term Coal-Related Surface Facilities and Structures
  - 19.8.14.1409.A(1), B(3), D(1), and E—Collateral Bonds
  - 19.8.14.1410.D(4)—Self-Bonding
  - 19.8.14.1411.B—Replacement of Bonds
  - 19.8.14.1412.A(3), B(2), C(2), and D—Requirement to Release Performance Bonds
  - 19.8.14.1413.A(2)(b), C, and D—Forfeiture Bonds
  - 19.8.14.1414.B and D—Terms and Conditions for Liability Insurance
  - 19.8.19.1902.C and C(3)(c)—Performance Standards for Coal Exploration
  - 19.8.20.2010.A—Hydrologic Balance: Water Quality Standards and Effluent Limitations
  - 19.8.20.2017.E(1), E(2), E(4), and E(6)—Hydrologic Balance: Permanent and Temporary Impoundments
  - 19.8.20.2019—Hydrologic Balance: Protection of Ground Water Recharge Capacity
  - 19.8.20.2026.B, B(1), and B(2)—Hydrologic Balance: Underground Mine Entry and Access Discharges
  - 19.8.20.2037.B—Disposal of Excess Spoil: Durable Rock Fills
  - 19.8.20.2047—Coal Processing Waste: Dams and Embankments: General Requirements
  - 19.8.20.2049.A(1)—Coal Processing Waste: Dams and Embankments: Design and Construction
  - 19.8.20.2050—Air Resources Protection
  - 19.8.20.2056—Backfilling and Grading: Covering Coal And Acid- and Toxic-forming Material
  - 19.8.20.2065 and 2065.B—Revegetation: Standards for Success
  - 19.8.20.2066—Revegetation: Tree and Shrub Stocking
  - 19.8.24.2404.C(4)(a) and (b), C(5), and C(6)—Prime Farmland: Revegetation
  - 19.8.26.2601.A, A(2), and D—Steep Slopes: Performance Standards
  - 19.8.27.2701.B—Coal Processing Plants: Performance Standards
  - 19.8.29.2900.B and H—Inspections
  - 19.8.30.3001.J—Notices of Violation
  - 19.8.30.3002.D—Permit Suspension or Revocation
  - 19.8.31.3105.B—Procedure for Civil Penalty Assessment
  - 19.8.31.3106.B and D—Procedure for Assessment Conference
  - 19.8.31.3110.A—Amount of Individual Civil Penalty
  - 19.8.34.3400—Scope
  - 19.8.34.3401—Definition
  - 19.8.34.3402 and 3402.A—Application Requirements and Procedures
  - 19.8.34.3403—Contents of Applications for Exemption
  - 19.8.34.3404—Public Availability of Information
  - 19.8.34.3405—Requirements for Exemptions
  - 19.8.34.3406—Conditions of Exemption and Right of Inspection and Entry
  - 19.8.34.3407—Stockpiling of Minerals
  - 19.8.34.3408 and 3408.C—Revocation and Enforcement
  - 19.8.34.3409, 3409.A and A(2)—Reporting Requirements
  - 19.8.35.12.C—How a Decision on a VER Request Will be Made
  - 19.8.35.14—Availability of Records for VER Requests and Determinations
- Because these changes are minor and nonsubstantive in nature, we find that they will not make New Mexico's previously approved rules less effective than the corresponding Federal regulations.
- B. Revisions to New Mexico's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*
- New Mexico proposed revisions to the following rules containing language that is the same as or is similar to the corresponding sections of the Federal regulations (NMAC citation followed by Federal counterpart citation and NMAC section title):
- 19.8.1.7.G(1), 30 CFR 707.5, Definitions
  - 19.8.13.1301.E(2)(b), 30 CFR 775.11(a), Permit Revisions
  - 19.8.20.2065.A, 30 CFR 817.116(a)(1), Revegetation: Standards for Success
  - 19.8.20.2065.B(1), 30 CFR 817.116(a)(2), Revegetation: Standards for Success
  - 19.8.20.2068, 30 CFR 817.122, Subsidence Control: Public Notice
  - 19.8.30.3000, 30 CFR 843.11(c), Cessation Orders
  - 19.8.31.3108.B, 30 CFR 845.20(b), Final Assessment and Payment of Penalty
  - 19.8.31.3110.B, 30 CFR 846.14(b), Amount of Individual Civil Penalty
- Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.
- C. Revisions to New Mexico's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations*
1. NMAC 19.8.5.504.D, 30 CFR 773.6(c), Permit Application Filing Deadlines
- New Mexico proposed to eliminate NMAC 19.8.5.504.D concerning applications for a permit to conduct surface coal mining and reclamation operations that do not meet the requirements of NMAC 19.8.5.501 and 19.8.5.502. NMAC 19.8.5.501 and 19.8.5.502 concern continuing interim

program permits and Federal permits, respectively. There are no longer any such interim or Federal permits that need to be continued in New Mexico, so citing them in this section is moot.

New Mexico also omitted the last sentence of 19.8.5.504.D, which makes reference to the rules and regulations of NMAC 19.8.11.1103.E, since 1103.E is proposed to be deleted with this amendment package. We approve these changes to New Mexico Administrative Code.

## 2. NMAC 19.8.7.701.F, Identification of Interests

New Mexico's existing rules require the applicant to submit the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area. New Mexico proposed to modify its existing rules by adding language that requires the permit application to also include "the owner of record and residents of all dwellings and structures on and within one-half mile (2640 feet) of any part of the proposed permit area". This provision adds specificity and is no less effective than the Federal counterpart at 30 CFR 778.13(b), which requires "the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area". Therefore, we find that NMAC 19.8.7.701.F is no less effective than 30 CFR 778.13(b) and approve it.

## 3. NMAC 19.8.8.812.D, Maps: General Requirements

New Mexico proposed to modify its existing rules by adding language at NMAC 19.8.8.812.D, which coincides with the above listed proposed change to NMAC 19.8.7.701.F. The proposed revision to 812.D ensures that dwellings and structures, and names of present owners of record and residents of those dwellings and structures, on and within one-half mile (2640 feet) of the proposed permit area are included on the permit application maps. New Mexico's proposed rule includes a larger area and therefore protects more dwellings and structures than the Federal counterpart at 30 CFR 779.24(d) which requires that only the location of all buildings on and within 1000 feet of the proposed permit area are included on the permit application maps. For this reason, we find that NMAC 19.8.812.D is no less effective than 30 CFR 778.13(b) and approve this proposed change.

## 4. NMAC 19.8.11.1100.B(1) Through (4), Public Notices of Filing of Permit Applications

New Mexico added language to NMAC 19.8.11.1100 which expands upon the Federal counterpart rules at 30 CFR 773.6(a) concerning public participation and public notification in the permitting processing. New Mexico proposed to modify its rules to expand the options for notification of permit applications. The added language requires the permit applicant to: "\* \* \* Submit, at the time of filing the application, a plan approved by the director [of the New Mexico program] to provide notice using at least three of the methods listed below. If the director determines that significant non-English speaking populations live within the general area of the proposed mine, the applicant shall include at least one method that seeks to reach these populations. The notice shall summarize the information listed in, and shall be given prior to the last publication of the notice in, Subsection A of 19.8.11.1100 NMAC. The methods may include:

(1) Mailing a notice to the owners of record, as shown by the most recent property tax schedule, of all properties adjacent to the proposed permit area and to the owners of all properties containing a residence located within one-half mile (2640 feet) of the proposed permit area as identified in Subsection F of 19.8.7.701 NMAC;

(2) Posting a notice in at least four publicly accessible and conspicuous places, including the entrance to the proposed operation if that entrance is publicly accessible and conspicuous;

(3) Publishing a notice in a display ad at least three inches by four inches at a place in the newspaper calculated to give the general public the most effective notice; or

(4) Broadcasting public service announcements on radio stations that serve the general permit area".

OSM supports any additional outreach to the public during the notification process. Because New Mexico's additions to NMAC result in more public notification than 30 CFR 773.6 requires, they are no less effective than the Federal regulations relating to public notification of permit applications. We approve these changes.

## 5. NMAC 19.8.11.1100.D(5), Public Notices of Filing of Permit Applications

New Mexico proposed to modify its existing rules to require that, in addition to Federal, State, Tribal, and local government agencies, governmental planning agencies, sewage and water

treatment authorities, and water companies, written notifications shall also be sent to "all persons on a list, maintained by the director, of individuals and organizations who have requested notice of applications under the act and who have provided a surface or electronic mail address to the director". This means that in addition to the above listed agencies, non-agency interested parties or individuals have equal access to written notifications. Because New Mexico's proposed rule provides additional access to written notification of agency decisions, we find that NMAC 19.8.11.1100.D(5) is no less effective than 30 CFR 773.6(a)(3) and approve it.

## 6. NMAC 19.8.11.1100.E(3), Public Notices of Filing of Permit Applications

New Mexico proposed a provision at NMAC 19.8.11.1100.E(3) that requires written notification to be posted on a Web site maintained by the director after receipt of a complete application. This proposed rule creates and requires an additional way to notify the public about a permit application. Although there is no Federal counterpart that exists, this provision expands upon the requirements listed in 30 CFR 773.6(a) and is therefore no less effective than 30 CFR. We approve this proposed revision.

## 7. NMAC 19.8.11.1103.B, 30 CFR 773.6(c)(2), Hearings and Conferences

New Mexico proposed to add a provision that in addition to "any person, whose interests are or may be adversely affected by the issuance, revision or renewal of the permit, or the officer or head of any federal, state, tribal or local government agency or authority", the *director* may also motion for an informal conference. This proposed change is more inclusive than the Federal counterpart at 30 CFR 773.6(c)(2), since an additional entity may request an informal conference. Therefore, we approve this proposed revision to NMAC 19.8.11.1103.B.

## 8. NMAC 19.8.11.1103.E, 30 CFR 773.6(c)(2) and 30 CFR 775.11, Hearings and Conferences

New Mexico proposed to repeal the "public hearing" option at 19.8.11.1103.E. Since 30 CFR has no part about "public hearings", only "informal conferences" at 30 CFR 773.6(c) (pre-approval of permit application) and "hearings" at 30 CFR 775.11 (after notification of decision concerning the application) in relation to the permit application process, the State thought this part should be omitted to be more consistent with 30

CFR. New Mexico's rules concerning informal conferences at NMAC 19.8.11.1103.A and B, like their Federal counterpart at 30 CFR 773.6(c)(2), include procedural guidelines for requesting an informal conference on any permit application, rules for conducting an informal conference (notification of location, time, and date of informal conference and who shall conduct the informal conference), and rules concerning requesting access to the permit area for information-gathering purposes. The rules at 19.8.11.1103 are as effective as the Federal counterpart at 30 CFR 773.6(c).

Of great importance is the proposed deletion of the following language at NMAC 19.8.11.1103.E concerning a person's right to present evidence, give testimony, etc. at the hearing:

NMAC 19.8.11.1103.E(5), which states that "any person desiring to present evidence or give testimony at the hearing on the proposed plan shall:

(a) File a request to do so with the director at least ten days prior to the hearing;

(b) Contain the name and address of the person desiring to participate; and

(c) Contain a concise statement of the nature of the person's interest" and NMAC 19.8.11.1103.E(7), which states that "any person who has filed a timely request to participate in the hearing shall be given reasonable time at the hearing to submit relevant evidence, data and views, and shall be allowed to call and examine witnesses, introduce exhibits, cross examine witnesses and submit rebuttal evidence."

It is essential that a person is provided the opportunity to present evidence, give testimony, cross examine witnesses, etc. at a hearing that is adjudicatory in nature.

The above two rules are addressed at NMAC 19.8.12.1200, *Administrative Review By The Director* (equivalent to the Federal regulation at 30 CFR 775.11, *Administrative and Judicial Review of Decisions*). 30 CFR 775.11 and NMAC 19.8.12.1200 both pertain to the request of a hearing on the reasons for the final decision *after* the applicant is notified of the final decision concerning the application.

It was a concern that the deletion of NMAC 19.8.11.1103.E would eliminate the opportunity for a person to request a hearing after the decision, but this option is clearly addressed and allowed by NMAC 19.8.12.1200.A, which states that "within 30 days after the applicant or permittee is notified of the final decision of the director concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights, or

concerning an application for coal exploration, or pursuant to Paragraph (2) of Subsection E of 19.8.13.1301 NMAC a decision regarding a permit modification, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with this section. Such request shall be in writing and state with reasonable specificity the reasons for the request and objections to the director's decision". Part B continues, "The director shall commence the hearing within 30 days of such request. This hearing shall be of record, adjudicatory in nature, and no person who presided at an informal conference under 19.8.11.1103 NMAC shall either preside at the hearing or participate in the decision following the hearing, or in any administrative appeal therefrom". Part 19.8.12.1200.B(1) addresses the granting of temporary relief, and is not relevant to this discussion. Part 19.8.12.1200.B(2) continues, "For the purpose of such hearing, the director may administer oaths and affirmation, subpoena witnesses, written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations". Continuing with the rules at NMAC 1200, NMAC 19.8.12.1200.B(3) requires the director to issue and furnish the applicant and hearing participants with the written findings of fact, conclusions of law, and order of the director (with respect to the appeal) within a specified time period (see section 69–25A–29 New Mexico Statutes 1978 Annotated (NMSA)). These requirements parallel the requirements of 30 CFR 775.11(b)(4). NMAC 19.8.12.1200.B(4) explains that the burden of proof is on the party seeking to reverse the decision of the director. 30 CFR 775.11(b)(5) uses similar language, "The burden of proof at such hearings shall be on the party seeking to reverse the decision of the regulatory authority".

We believe that the language at NMAC 19.8.12.1200 adequately replaces the omitted parts of 19.8.11.1103.E and is as effective as the SMCRA counterpart at 775.11. We approve these changes.

9. NMAC 19.8.11.1103.F, 30 CFR 773.6(c)(2), Hearings and Conferences

New Mexico proposed to omit NMAC 19.8.11.1103.F concerning public hearings. The unavailability of an

informal conference if a public hearing is held is irrelevant since 19.8.11.1103.E (Public hearings) is proposed to be deleted. We agree with New Mexico's reasoning and therefore approve this change.

10. NMAC 19.8.13.1301.E(2)(a), 30 CFR 773.19(b), Permit Revisions

New Mexico proposed this revision in an attempt to clarify who "interested parties" are. The new language specifies that a written copy of decision must now be mailed to "all persons on a list maintained by the director who have requested notice of applications under the act". New Mexico borrows this language from its Hard Rock Mining program, where there is an extensive list of people who have requested to be informed of all hard rock permitting activity. This proposed change to NMAC 19.8.13.1301.E(2)(a) offers more clarification and expands upon the Federal counterpart at 30 CFR 773.19(b). For this reason, we find New Mexico's proposed revision to be consistent with and no less effective than its Federal counterpart at 30 CFR 773.19(b) and we approve it.

11. NMAC 19.8.31.3106.B(3)(a), 30 CFR 845.18(b)(3)(i), Procedure for Assessment Conference

30 CFR 845.18(b)(3)(i) requires that the settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed for the civil penalty. New Mexico proposed the addition of inadvertently missing language to 19.8.31.3106.B(3)(a) to make it no less effective than the Federal counterpart at 30 CFR 845.18(b)(3)(i); with the additional requirement that the director, as well as the person assessed, must sign the settlement agreement. We find that this proposed language is no less effective than the Federal counterpart at 30 CFR 845.18(b)(3)(i) and therefore approve this proposed revision to NMAC 19.8.31.3106.B(3)(a).

The following parts have been amended to include the word "tribal" any time there is reference to any Federal, State, or local government agency. For example, at 19.8.13.1307.B(2), it is stated that "Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state, tribal, or federal government agency may submit written comments on the application \* \* \*".

12. NMAC 19.8.11.1100.D(1), 30 CFR 773.6(a)(3), Public Notices of Filing of Permit Applications

13. NMAC 19.8.11.1102.A, 30 CFR 773.6(b)(2), Right To File Written Objections

14. NMAC 19.8.11.1103.A, 30 CFR 773.6(c)(1), Hearings and Conferences

15. NMAC 19.8.13.1307.B(2), 30 CFR 774.17(c), Transfer, Assignment or Sale of Permit Rights: Obtaining Approval

16. NMAC 19.8.14.1412.A(2)(f), 30 CFR 800.40(a)(2), Requirement To Release Performance Bonds

17. NMAC 19.8.14.1412.F, 30 CFR 800.40(f), Requirement To Release Performance Bonds

In a conversation with the State (Administrative Record No. OSM–2007–0021–0006, ‘Conversation Record’), it was clarified that New Mexico has always considered the tribes to be a local government agency. Historically, New Mexico has shown great concern for the tribes and has included them any time other government agencies have been involved. OSM recognizes the tribes’ role and the importance of the tribes’ involvement to the State. Although 30 CFR does not include tribes in its language at the above listed Federal counterparts, it supports New Mexico’s revisions because they are potentially more inclusive than the Federal regulations.

#### *D. Revisions to New Mexico’s Rules With No Corresponding Federal Regulations*

1. NMAC 19.8.11.1100.F, Public Notices of Filing of Permit Applications

New Mexico proposed to add the following parts to 19.8.11.1100 NMAC:

F. Public meeting. Within sixty days of receipt of a complete application for a new permit or a permit revision, the director shall hold a public meeting at a location near the proposed mining operation.

(1) The public meeting will serve as an opportunity for the director and applicant to inform the public of the proposed action and to provide an opportunity for the public to identify issues and concerns associated with the application.

(2) The director shall give notice at least fifteen days prior to the meeting date in a newspaper of general circulation and on radio stations serving the mine area.

(3) The director or his representative shall keep a record summarizing issues and concerns raised at the meeting.

(4) Any person attending the meeting may submit written comments to the director up to thirty days after the meeting.

New Mexico proposes to add language that requires a public meeting to be held to afford the community the opportunity

to gain information about the permit application. At least fifteen days prior to the public meeting, the director shall give notice of the meeting in a newspaper of general circulation and on radio stations serving the mine area. At this public meeting, the applicant and the State will inform the public of the proposed action. Up to thirty days after the public meeting, attendees may submit written comments to the director.

The public meeting is an addition to the provision at NMAC 19.8.11.1103.A, whereby any person whose interests are or may be adversely affected by the issuance, revision, or renewal of a permit may request an informal conference by rule NMAC 19.8.11.1103.A. New Mexico’s informal conference is consistent with opportunities for an informal conference at 30 CFR 773.6(c)(1).

There is no direct 30 CFR counterpart to the added requirement of a public meeting at NMAC 19.8.11.1100.F. However, OSM supports any additional outreach to and informative opportunities for the public during the notification process. Because New Mexico’s additions to NMAC result in more public notification than 30 CFR 773.6 requires, they are no less effective than the Federal regulations relating to public notification of permit applications. We approve these changes to New Mexico Administrative Code.

2. 19.8.11.1109.B and 19.8.11.1109.C, Permit Approval or Denial Actions

New Mexico proposed to eliminate references to public hearings at NMAC 19.8.11.1109.B and C, since the proposed deletion of 19.8.11.1103.E (*Hearings and Conferences: Public hearing*) will omit any language about public hearings. The language must now only refer to the informal conference that exists at 19.8.11.1103. We approve this proposed revision.

3. 19.8.13.1301.E(1), Permit Revisions

The State proposed to remove the following language associated with applications for a permit revision: “(any application for a revision) \* \* \* that proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 19.8.7 NMAC, 19.8.8 NMAC, 19.8.9 NMAC, or 19.8.10 NMAC, or in the conditions of the original permit \* \* \* (shall, at a minimum, be subject to the requirements of 19.8.11 NMAC and 19.8.12 NMAC)”. Rule

19.8.13.1301.A(1) already describes when it is necessary for a permit revision to be obtained, stating that “a

revision to a permit shall be obtained for changes in the surface coal mining or reclamation operation as described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conducting mining or reclamation operations contemplated by the original permit \* \* \*”. Consequently, this language is repetitive and unnecessary, and OSM approves the removal of this language.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. OSM–2007–0021–0001), but did not receive any.

##### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCR, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (Administrative Record No. OSM–2007–0021–0003). We did not receive any comments from other Federal agencies.

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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 revisions that New Mexico proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

##### *State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On January 16, 2008, we requested comments on New Mexico’s amendment (Administrative Record No. OSM–2007–0021–0002), but neither responded to our request.

#### **V. OSM’s Decision**

Based on the above findings, we approve New Mexico’s November 28, 2007, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 931, which codify decisions

concerning the New Mexico program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### *Effect of OSM'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 change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the New Mexico program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require New Mexico to enforce only those approved provisions.

## **VI. 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 regulation.

#### *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 (Regulatory Planning and Review).

#### *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 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 because each 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, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.

#### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because 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) *et seq.*).

#### *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. 3501 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior certifies 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, which 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. 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), of 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, Federal, State, or local government agencies, or geographic regions.

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 an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. 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 did not impose an unfunded mandate.

#### List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 9, 2008.

**Allen D. Klein,**

*Regional Director, Western Region.*

■ For the reasons set out in the preamble, 30 CFR part 931 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 in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

#### § 931.15 Approval of New Mexico regulatory program amendments

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* November 28, 2007 ...	* November 18, 2008 ..	* 19 NMAC Parts 1 through 35 (recodification), 19.8.1.7.G(1); 19.8.11.1100.D(1); 19.8.11.1102.A; 19.8.11.1103.A; 19.8.11.1109.B and C; 19.8.13.1301.E(1) and E(2)(b); 19.8.13.1307.B(2); 19.8.14.1412.A(2)(f); 19.8.14.1412.F; 19.8.20.2065.A and B(1); 19.8.20.2068; 19.8.30.3000; 19.8.31.3108.B; 19.8.31.3110.B; 19.8.5.504.D; 19.8.7.701.F; 19.8.8.812.D; 19.8.11.1100.B(1), (2), (3), and (4), D(5), E(3), and F; 19.8.11.1103.B, E, and F; 19.8.13.1301.E(2)(a); 19.8.31.3106.B(3)(a).

[FR Doc. E8–27360 Filed 11–17–08; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[USCG–2008–1104]

RIN 1625–AA09

#### Drawbridge Operation Regulations; Elizabeth River—Eastern Branch, at Norfolk, VA, Maintenance

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Norfolk Southern Railroad (NS# V2.8) Bridge, at mile 2.7, across the Elizabeth River—Eastern Branch at Norfolk, VA. Under this temporary deviation, the drawbridge may remain in the closed position on specific dates and times to facilitate mechanical repairs.

**DATES:** This deviation is effective from 7 a.m. on December 8, 2008, to 11 p.m. on December 19, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1104 and are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of

Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

**SUPPLEMENTARY INFORMATION:** The Norfolk Southern Corporation, who owns and operates this single-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.1007(a) to facilitate mechanical repairs.

The NS# V2.8 Bridge, a swing-type drawbridge, has a vertical clearance in the closed position to vessels of six feet, above mean high water.

To facilitate repairs to the center wedge machinery of the swing span, the drawbridge will be maintained in the closed-to-navigation position from 7 a.m. on December 8, 2008, until and including 11 p.m. on December 19, 2008.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This

deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 5, 2008.

**Waverly W. Gregory, Jr.,**

*Chief, Bridge Administration Branch Fifth Coast Guard District.*

[FR Doc. E8–27266 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–15–P

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

[Docket Nos. MC2009–4 and CP2009–5; Order No. 131]

#### Administrative Practice and Procedure, Postal Service

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adding Priority Mail Contract 3 (MC2009–4 and CP2009–5) to the Competitive Product List. It is also noticing a related contract. These actions are consistent with changes in a recent law governing postal operations and a related Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

**DATES:** Effective November 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 73 FR 66075 (November 6, 2008).

The Postal Service seeks to add a new product identified as Priority Mail Contract 3 to the Competitive Product