

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
* 106	* 8-1-02	* 9-1-02	* 4.25	* 4.00	* 4.00	* 4.00	* 7	* 8

3. In appendix C to part 4022, Rate Set 106, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments**

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
* 106	* 8-1-02	* 9-1-02	* 4.25	* 4.00	* 4.00	* 4.00	* 7	* 8

**PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

\* \* \* \* \*

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for $t =$	$i_t$	for $t =$	$i_t$	for $t =$
* August 2002 .....	* .0550	* 1-25	* .0425	* >25	* N/A	* N/A

Issued in Washington, DC, on this 9th day of July 2002.  
**Steven A. Kandarian,**  
*Executive Director, Pension Benefit Guaranty Corporation.*  
 [FR Doc. 02-17641 Filed 7-12-02; 8:45 am]  
**BILLING CODE 7708-01-P**

**DEPARTMENT OF THE INTERIOR**  
**Office of Surface Mining Reclamation and Enforcement**  
**30 CFR Part 931**  
**[NM-042-FOR]**  
**New Mexico Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.  
**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed 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 proposed revisions to and additions of rules about definitions, general environmental resource information, operations that may have an adverse impact on publicly owned parks or places listed on the National Register of Historic Places, bond release applications, termination of jurisdiction, prime farmland reclamation, inspection frequency of abandoned sites, hearings for charges of violation, the qualifying criteria for assistance under the small operator's program, areas where mining is prohibited or limited, criteria for designating areas unsuitable for surface coal mining, applications for and approval of coal exploration operations of more than 250 tons, criteria for permit approval or denial, application and approval criteria for demonstrating valid existing rights, the one square mile criterion in the definition of intermittent streams, and miscellaneous non-substantive editorial revisions. New Mexico revised its program to be consistent with the corresponding Federal regulations, provide additional safeguards, and clarify ambiguities.

**EFFECTIVE DATE:** July 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Willis L. Gainer, Telephone: (505) 248-5096, Internet address: [wgainer@osmre.gov](mailto:wgainer@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the New Mexico Program
- II. Submission of the Proposed Amendment
- III. 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 (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 931.11, 931.15, 931.16, and 931.30.

## II. Submission of the Proposed Amendment

By letter dated November 28, 2001, New Mexico sent us an amendment to its program (Administrative Record No. NM-853) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment in response to June 19, 1997, and April 2, 2001 letters (Administrative Record Nos. NM-796 and NM-851) that we sent to New Mexico in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 931.16(e), (u) and (v); and to include the changes made at its own initiative.

We announced receipt of the proposed amendment in the January 9, 2002, **Federal Register** (67 FR 1173). 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. NM-857). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 8, 2002. We received comments from two Federal agencies.

## 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 and/or grammatical changes to the following previously-approved rules.

19.8.1 through 19.8.34 New Mexico Annotated Code (NMAC) (no corresponding Federal regulation or SMCRA provision), administrative code citations;

19.8.8.802.A NMAC (30 CFR 780.21(c)), general requirements for description of hydrology and geology;

19.8.13.1307 NMAC (30 CFR 774.17(b)(3)), requirement to obtain a bond;

19.8.19.1900.A, C and C(2) NMAC (30 CFR 772.11(a), 772.12, and 772.13(a)); requirements concerning coal exploration; and

19.8.20.2009.E and E(5) NMAC (30 CFR 780.21(c)), general requirements for the hydrologic balance.

Because these changes are minor, we find that they will not make New Mexico's 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 similar to the corresponding sections of the Federal regulations.

19.8.1.7.O(5) NMAC (30 CFR 701.5), definition of "other treatment facilities;"

19.8.1.7.P(12) NMAC (30 CFR 701.5), definition of "previously mined area;"

19.8.1.7.Q(1) NMAC (30 CFR 701.5), definition of "qualified laboratory;"

19.8.2.201 NMAC (30 CFR 761.11), areas where surface coal mining operations are prohibited;

19.8.2.202.A and B(1), (2) and (3), and (C) NMAC (30 CFR 761.17(a) and (b)(1), (2) and (3), and (C)), regulatory authority obligations at the time of permit application review;

19.8.2.202.E NMAC (30 CFR 761.15), procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling;

19.8.2.202.F NMAC (30 CFR 761.17(b)(4) and (d)(1) through (3)), procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places;

19.8.2.202.G NMAC (30 CFR 761.13(c)), procedures for compatibility findings concerning surface coal mining operations on Federal lands in national forests;

19.8.2.202.H and 19.8.3.300.C NMAC (30 CFR 762.14), applicability of petitions for lands designated unsuitable for mining to areas where surface coal mining operations are prohibited or limited;

19.8.2.203 NMAC (30 CFR 761.12), exceptions to rules concerning areas where surface coal mining operations are prohibited;

19.8.6.602.A and 603 NMAC (30 CFR 772.12), permit requirements for exploration;

19.8.7.704.C NMAC (30 CFR 778.16), proposed permit area location with respect to areas designated unsuitable for mining;

19.8.8.801.B NMAC (30 CFR 779.12), general environmental resources

information for cultural and historic resources;

19.8.9.912.A and B NMAC (30 CFR 780.31), protection of public parks and historic places;

19.8.11.1106.D NMAC (30 CFR 773.15), criteria for permit approval or denial;

19.8.14.1412.A NMAC (30 CFR 800.40(a)(3)), bond release application requirements;

19.8.14.1415.A NMAC (30 CFR 700.11(d)), termination of jurisdiction;

19.8.20.2057.A and 19.8.20.2058.A NMAC (30 CFR 816.104(a), 816.105(a), 817.104(a), and 817.105(a)), definitions of "thin overburden" and "thick overburden;"

19.8.24.2400.C NMAC (30 CFR 785.17(e)(5)), prime farmland performance standard;

19.8.29.2900.G NMAC (30 CFR 840.11(g)), definition of "abandoned site;"

19.8.31.3107.A NMAC (30 CFR 845.19(a)), request for an administrative review hearing concerning assessed civil penalties; and

19.8.32.3200.B, 19.8.32.3203.A and B(1) through (6), and 19.8.32.3206.A NMAC (30 CFR 795.6(a)(2)(i) and (ii), 795.9(a) and (b)(1) through (6), and 795.12(a), (a)(2) and (a)(3)), eligibility for the small operator assistance program (SOAP), SOAP services and data requirements, and SOAP applicant liability.

19.8.35.7.A, B, C, and D NMAC (30 CFR 761.5 and 761.5(a), (b) and (c)), definition of "valid existing rights" (VER); and

19.8.35.8.A and B NMAC; 19.8.35.9.A, B, C, and D NMAC; 19.8.35.10A, B, C, and D NMAC; 19.8.35.11.A, B, and C NMAC; 19.8.35.12.A, B, C, D, and E NMAC; 19.8.35.13 NMAC; and 19.8.35.14 NMAC (30 CFR 761.16(a), (b), (c), (d), (e), (f), and (g)), submission and processing of requests for VER.

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. 19.8.1.7.F(5) and N(2) NMAC, Definitions of "Fixed Assets" and "Net Worth."

At 19.8.1.7.F(5) and N(2) NMAC, New Mexico proposed to revise the definitions of, respectively, (1) "fixed assets" to mean plants, facilities and equipment, not used for the production, transportation or processing of coal, and

does not include land or coal in place and (2) "net worth" to mean the total assets minus total liabilities and is equivalent to owner's equity, and, for the purposes of 19.8.14.1410.A(3)(b) NMAC, plants, facilities and equipment used for the production, transportation or processing of coal, and land or coal in place shall not be considered assets in a calculation of net worth.

At 30 CFR 800.23(a) and (b), the counterpart Federal regulations define, respectively, (1) "fixed assets" to mean plants and equipment but does not include land or coal in place and (2) "net worth" to mean total assets minus total liabilities and is equivalent to owner's equity.

New Mexico's proposed definition of "fixed assets" requires an applicant for self-bonding to reduce the value of its fixed assets by eliminating plants, facilities and equipment used for the production, transportation or processing of coal from the calculation of fixed assets. Similarly, New Mexico's proposed definition of "net worth" requires an applicant, that bases its qualification for self-bonding on the financial tests at 19.8.14.1410.A (3)(b) NMAC, to remove the value of assets such as plants, facilities and equipment used for the production, transportation or processing of coal from its calculation of net worth. These provisions are not included in the counterpart Federal definitions.

Self-bonds are not based upon the permittee's assignment or pledge of assets. Therefore, a regulatory authority relies on the financial tests to indicate whether the liquidity and solvency levels of a self-bonding applicant are sufficient for the applicant to perform its reclamation obligations without separate surety. Plants, facilities and equipment used for coal mining are likely to be more temporary in nature and likely to be removed or demolished following mining as part of the approved reclamation plan. New Mexico's proposed revisions of the definitions of "fixed assets" and "net worth" require a self-bonding applicant to rely on the value of more permanent assets not related to its mining operation.

With these proposed revisions, New Mexico has proposed to provide additional protection from the risk of forfeiture of a self-bond than is afforded in the Federal regulations. In its preamble to the final self-bonding regulations (48 FR 36418, August 10, 1983), OSM indicated that some balance sheet items were defined by using standard accounting definitions; others were altered to provide more protection and less risk to the regulatory authority.

OSM further stated that in its definition of fixed assets—

Unimproved land will not be allowed in the fixed assets calculations because values are often unreliable. Coal in place is not easily liquidated and its value depends on mining and market conditions; therefore, it is not included.

New Mexico's proposal to eliminate assets used for coal mining is consistent with the Federal regulations at 30 CFR 800.23(a) concerning self-bonding that eliminate the use of assets whose values are unreliable and not easily liquidated.

Therefore, the Director finds that New Mexico's proposed definitions at 19.8.1.7.F(5) and N(2) NMAC are no less stringent than SMCRA and no less effective than the counterpart Federal regulations at 30 CFR 800.23(a) and approves them.

## 2. 19.8.1.7.I(7) NMAC, Definition of "Intermittent Stream," New Mexico's Response to Required Amendments at 30 CFR 931.16(e), (u) and (v).

New Mexico's existing rule at 19.8.1.7.I(7) NMAC defines "intermittent stream" to mean "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."

OSM, at 30 CFR 701.5, defines "intermittent stream" to mean (a) a stream or reach of stream that drains a watershed of at least one square mile, or (b) 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.

OSM required at 30 CFR 931.16(e), (u) and (v) that New Mexico revise its definition of "intermittent stream," at 19.8.1.7.I(7) NMAC, to include any watershed that drains more than one square mile or otherwise revise its rules, concerning streams that drain watersheds one square mile or greater in area and that flow only in direct response to surface runoff from precipitation or melting snow or ice, to be no less effective than the Federal regulations concerning permit application requirements and performance standards involving diversions, roads and stream protection. (See findings nos. 7(a), 20(d), and 21; 58 FR 65907, December 17, 1993; Administrative Record No. NM-706.)

New Mexico responded by explaining why, based on regional conditions and historical experience, it would be inappropriate to include any watershed draining one-square mile in its definition of "intermittent stream" and why the existing New Mexico program

provides protection for roads and streams involving watersheds one square mile or greater in area that flow only in direct response to surface runoff from precipitation or melting snow or ice that is no less effective than the Federal program. New Mexico pointed out that the inclusion of the one square mile watershed criteria in its definition of "intermittent stream" would, in effect, cause thousands of normally dry ephemeral arroyos in New Mexico to arbitrarily be classified as intermittent streams. Furthermore, New Mexico stated—

[t]here has been no historic or scientific justification in the last twenty years of New Mexico's regulatory program to impose the higher standards of protection associated with the higher flows of truly intermittent and perennial streams to the normally dry arroyos of New Mexico.

OSM adopted its definition of "intermittent stream" along with definitions of perennial and ephemeral streams in the original 1979 permanent program regulations (44 FR 14932, March 13, 1979). OSM stated these terms were adopted to distinguish continuously or nearly continuously flowing streams from ephemeral streams, because different regulatory controls were needed to protect these two categories. A one-mile watershed concept in part (a) of the Federal definition of "intermittent stream" was adopted because at least two states (Alabama, Illinois) found it easy to administer and apply. OSM also stated that, even for arid regions, a stream draining that much land has the potential for flood volumes that would necessitate application of more stringent stream channel diversion criteria (*i.e.*, those applicable to intermittent streams rather than ephemeral streams). The term "intermittent stream" comes into play in the Federal regulations governing diversions at 30 CFR 816.43, stream buffer zones at 30 CFR 816.57 and roads at 30 CFR 816.150 and 151.

Under the Federal regulations at 30 CFR 816.43, concerning diversions, intermittent streams may be diverted but must comply with findings for stream buffer zones and the diverted channel must be designed and certified by a professional engineer for a 10-year, 6-hour storm event for temporary and 100-year, 6-hour storm events for permanent diversions. In the Federal regulations, diversions of ephemeral streams must be designed for 2-year, 6-hour storms for temporary and 10-year, 6-hour storms for permanent diversions.

Under the Federal regulations at 30 CFR 816.57, concerning stream buffer zones, no land within 100 feet of an intermittent stream shall be disturbed

unless the regulatory authority specifically authorizes surface mining activities closer to or through such a stream. The regulatory authority may authorize such activities only after finding that surface mining activities will not cause or contribute to the violation of applicable water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream. The stream buffer limitations do not apply to ephemeral streams.

Under the Federal regulations at 30 CFR 816.150(a), concerning all roads, no part of any road shall be located in the channel of an intermittent stream unless specific approval is granted by the regulatory authority in accordance with 30 CFR 816.41 through 30 CFR 816.43 and 30 CFR 816.57. Under the Federal regulations at 30 CFR 816.151, concerning primary roads, fords of intermittent streams are prohibited unless specifically approved by the regulatory authority as temporary routes during periods of road construction. These limitations on roads do not apply to ephemeral streams.

New Mexico specifically addressed these regulatory ramifications concerning ephemeral streams draining areas greater than one square mile with the following discussion in support of the effectiveness of its existing program:

*Performance Standards Regarding Diversion Designs.* The [New Mexico] regulations for diversions of ephemeral streams already require that the diversions be designed, constructed and maintained to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas and prevent material damage outside the permit area and to assure the safety of the public.

Temporary clear water diversions of ephemeral streams must be designed to safely pass the peak runoff from a 2-year, 24-hour event and temporary diversions of any disturbed area or permanent diversions the 10-year, 24-hour event. These design standards take into account the exact watershed in question as well as the predicted rainfall amounts and intensity of the area. Therefore, a *site specific* calculation must be done for ephemeral stream channel diversion that would take into account the possibility of "flash flooding".

Diversions of ephemeral streams must also be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to stream flow and to run-off outside the permit area, to the extent possible *using the best technology currently available*.

Therefore, diversion designs of ephemeral streams must already use site-specific designs which take into account the local watershed and rainfall conditions; use the best technology currently available; protect against material damage both on and off-site;

and, minimize impact to the hydrologic balance.

The higher standards imposed on diversions of intermittent and perennial streams are to provide a greater degree of safety and environmental protection for the higher flows associated with those types of streams. There has been no historical or scientific justification to impose these higher standards on normally dry, ephemeral arroyos in New Mexico.

*Performance Standards Regarding Road Crossings.* Because of the nature of ephemeral streams (dry arroyos) in New Mexico, the protection of stream habitat in arroyos is not an issue. Therefore, the disallowance of stream fords of arroyos with a watershed of more than one square mile is not appropriate.

*Performance Standards Regarding Stream Buffer Zones.* Again, the higher standards imposed on mining disturbances within 100' of a perennial or intermittent stream are to provide a greater degree of protection for the higher flows, moisture and stream habitat associated with intermittent and perennial streams. Imposing this same standard to normally dry, ephemeral arroyos is not necessary or appropriate in New Mexico.

New Mexico noted that the existing New Mexico program requires that all structures (*e.g.*, diversions and low water crossings) treating *disturbed area* (emphasis added) runoff must be designed, at a minimum, to safely pass the 10-year, 24-hour storm event. This requirement does not exist in the Federal program, and is more stringent than the Federal regulations with respect to temporary diversions of ephemeral streams, which require that temporary structures be designed to safely pass the 2-year, 6-hour storm event. In New Mexico, only temporary clear water diversions of ephemeral drainages would be designed using the minimum 2-year, 24-hour storm event.

In addition, New Mexico stressed that the existing implementation of its design rules for all structures errs on the conservative side because the analysis of a watershed (1) includes high curve runoff numbers based on soil types and a lack of vegetation and (2) assumes that rain falls evenly over the entire watershed. It is the nature of storm events in New Mexico that rain is highly localized and rarely if ever falls over an entire watershed. These aspects of watershed analysis in New Mexico result in structures designed to handle more water than would be anticipated to actually ever result from a design storm event. Therefore, should a flash flood occur in one part of the watershed, New Mexico asserts that the diversion or road crossing designed for ephemeral streams draining larger than one square mile will include the capacity to handle the more localized event.

New Mexico provided examples of approved diversions and road crossings designed under the existing rules for ephemeral streams draining areas larger than one square mile. These examples are from three of the five active mining operations in New Mexico. Because of topographic conditions in New Mexico where the other two approved mining operations exist, there are no ephemeral streams draining a watershed that is greater than one square mile. Three of these five examples have been in place for 15, 16, and 22 years; the other two have been in place 2 and 3 years. These structures involve ephemeral drainages with watersheds ranging in area from 2.3 to 121.7 square miles.

Specifically, New Mexico approved: (1) In 2000, a low water road crossing for an ephemeral stream that drains a watershed of 121.7 square miles; (2) in 1999, a temporary diversion for a ephemeral stream that drains a watershed of 2.3 square miles; (3) in 1987, a diversion for an ephemeral stream that drains a watershed of 16 square miles; (4) in 1986, a diversion for an ephemeral stream that drains a watershed of 7.2 square miles; and (5) in 1980, a diversion for an ephemeral stream that drains a watershed of 121.7 square miles. In the history of these examples, New Mexico has never observed problems in the field. New Mexico offered these examples as evidence that its existing program provides for adequate protection for structures involving ephemeral streams that drain more than one square mile and flow only in direct response to surface runoff from precipitation or melting snow or ice.

Based on the above discussion, OSM finds that New Mexico has addressed all programmatic ramifications concerning the protection of ephemeral streams draining areas greater than one square mile, and, in doing so, has demonstrated, through rationale and field examples, that its existing program rules are no less effective than the Federal program in providing for protection of ephemeral streams draining an area of more than one square mile. Therefore, the Director no longer requires revision of New Mexico's definition of "intermittent stream" at 19.8.1.7.I(7) NMAC to include streams draining an area greater than one square mile and is removing the required amendments at 30 CFR 931.16(e), (u) and (v).

3. 19.8.2.202.D NMAC, Procedures for Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road.

Both New Mexico's proposed rules at 19.8.2.202.D NMAC and the counterpart Federal regulations at 30 CFR 716.14 require that an applicant must obtain any necessary approvals from the authority with jurisdiction over the road if the applicant proposes to: (1) Relocate a public road, (2) close a public road, or (3) conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

The Federal regulation at 30 CFR 761.14(c) requires that, before approving one of the above exceptions to the prohibitions placed on mining near public roads, the regulatory authority, or the public road authority that it designates, must determine that the interests of the public and affected landowners will be protected. The Federal regulations state that before making this determination, the authority must: (1) Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation; (2) if a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and (3) based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the authority must make this finding within 30 days after the hearing.

New Mexico proposed at 19.8.2.202.D NMAC that, where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to relocate or close any public road, the Director (of the New Mexico program) shall: (1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road; (2) provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing; (3) hold a public hearing in the locality of the proposed mining operations where any member of the public may participate for the purpose of determining whether the interests of the public and affected landowners will be protected; and (4) make a written finding based upon information received at the public

hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

New Mexico's rules are the same as the Federal regulations with one exception. New Mexico, instead of requiring a public comment period during which a hearing may be requested, has elected to always require a public hearing as a means of determining whether the interests of the public and affected landowners will be protected. The counterpart Federal regulations only require a public hearing if requested during a public comment period. New Mexico, in always providing for a public hearing, has afforded a greater opportunity for public input than do the Federal regulations.

The Director finds that New Mexico's proposed rules at 19.8.2.202.D NMAC are consistent with and no less effective than the Federal regulations at 30 CFR 716.14 and approves them.

#### 4. 19.8.29.2900.H NMAC, Inspection Frequency at Abandoned Mines

New Mexico proposed rules at 19.8.29.2900.H NMAC concerning the frequency of inspection at abandoned coal mines. With one exception, New Mexico's proposed rules are identical to the counterpart Federal regulations at 30 CFR 840.11(h).

New Mexico's proposed 19.8.29.2900.H NMAC provides for a minimum inspection frequency of one complete inspection per quarter at abandoned sites. The counterpart Federal regulations at 30 CFR 840.11(h) provide for a minimum inspection frequency of one complete inspection per year. New Mexico's proposed rules eliminate the requirement for the partial inspections at abandoned sites that are required for active coal mine operations, as do the counterpart Federal regulations. However, New Mexico's proposed minimum inspection frequency of one complete inspection per quarter is greater than and more stringent than that provided for in the Federal regulations. A greater inspection frequency may result in greater environmental protection at the abandoned site in that field conditions would be assessed more frequently.

Therefore, the Director finds that New Mexico's proposed rules at 19.8.29.2900.H NMAC are no less effective than the Federal regulations at 30 CFR 840.11(h) and approves them.

## IV. Summary and Disposition of Comments

### Public Comments

We asked for public comments on the amendment (Administrative Record No. NM-854), but did not receive any.

### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (Administrative Record No. NM-854).

By letter dated December 17, 2001 (Administrative Record No. NM-855), the Bureau of Land Management (BLM) responded with the following comments. BLM requested clarification of New Mexico's proposed rules at (1) 19.8.2.201 NMAC, concerning areas where surface coal mining operations are prohibited, and (2) 19.8.24.2400.C NMAC, concerning prime farmland.

*Areas where surface coal mining operations are prohibited.* New Mexico's proposed rule at 19.8.2.201 NMAC is substantively identical to the Federal regulation at 30 CFR 761.11. Both identify specific locations where surface coal mining operations are prohibited, subject to valid existing rights (VER), with possible exceptions. Features protected include public and National Parks, wildlife refuges, public roads, occupied dwellings, schools, churches and cemeteries.

BLM asked whether mining would be prohibited or allowed on the areas in question if a cultural feature were created after the coal lease was issued, or after the operation began on the lease or logical mining unit.

When a mining operation began is directly relevant to whether resource protection under 30 CFR 761.11 and 19.8.2.201 NMAC is exempted. Whether the coal lease was issued may be relevant to a determination of VER. Below is an explanation of the proposed New Mexico rules that would determine when mining would be prohibited.

OSM's Federal regulations at 30 CFR 761.12 and New Mexico's proposed rules at 19.8.2.203 NMAC exempt the prohibitions of 30 CFR 761.11 and 19.8.2.201 NMAC (1) concerning surface coal mining operations with a valid permit that existed when the land came under the protection of 30 CFR 761.11 or 19.8.2.201 NMAC and (2) with respect to operations existing prior to August 3, 1977, lands upon which validly authorized surface coal mining operations existed when the land came under the protection of the Federal

regulations at 30 CFR 761.11 or the New Mexico rules at 19.8.2.201 NMAC.

Where these exemptions do not apply, the prohibitions may be waived if the applicant can demonstrate VER as defined by New Mexico at proposed rules 19.8.35.7.A through D NMAC and in the Federal regulations at 30 CFR 761.5(a), (b) and (c).

OSM's definition of VER (New Mexico's definition is identical to OSM's definition) provides for a person claiming VER to demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e). Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation. However, a person claiming VER must also demonstrate compliance with one of the following standards: (1) All permits and other authorizations required to conduct surface coal mining operations must have been obtained, or a good faith effort to obtain all necessary permits and authorizations must have been made, before the land came under the protection of Sec. 761.11 or 30 U.S.C. 1272(e). At a minimum, an application must have been submitted for any permit required under the Federal regulations or a counterpart State program; (2) the land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations have been obtained, or a good faith attempt to obtain all permits and authorizations has been made, before the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e). To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e). Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e) when the regulatory authority

approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as: (i) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e) depend upon use of that land for surface coal mining operations. (ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations. (iii) The extent to which investments in the operation before the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations. (iv) Whether the land lies within the area identified on the life-of-mine map submitted under 30 CFR 779.24(c) or 30 CFR 783.24(c) before the land came under the protection of 30 CFR 761.11.

Furthermore, a person who claims VER to use or construct a road across the surface of lands protected by 30 CFR 761.11 or 30 U.S.C. 1272(e) must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in 30 CFR 700.5: (1) The road existed when the land upon which it is located came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations. (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e), and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations. (3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 30 CFR 761.11 or 30 U.S.C. 1272(e). (4) VER exist under paragraphs (a) and (b) of the definition.

Because New Mexico's proposed rules at 19.8.2.201 NMAC are substantively identical to the Federal regulations at 30 CFR 761.11, the Director, as discussed in Finding No. III.B above, is approving them. The Director is not requiring that New Mexico take any action in response to BLM's comments.

*Prime Farmlands.* New Mexico's proposed rule 19.8.24.2400.C NMAC is identical to the Federal regulation at 30 CFR 785.17(e)(5) and requires that—

the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

BLM questioned (1) whether the proposed rule meant that soil and growth medium (which we construed to be prime farmland soils) would not be covered by any planned water body, (2) how far removed must any water body be located (i.e., would there be a required zone between the prime farmland and the water body or could prime farmland surround a water body) and (3) can prime farmland be relocated in the reclamation process?

OSM promulgated the Federal regulation at 30 CFR 785.17(e)(5) on October 18, 1988; see the preamble discussion at II.A, 53 FR 40828, 40829—40835. In this discussion OSM asserted that the relocation of prime farmland soils within the permit is authorized. The only limitation is that the applicant must demonstrate that there will be no decrease in the acreage of prime farmland soils and the productivity capacity of reconstructed prime farmland will be maintained. OSM clarified that where non-prime farmland areas are found on the permit areas, these areas may be subjected to land use changes, including the creation of water bodies, provided that the alternative post-mining land use requirements of the regulations are met.

OSM stated that prime farmland soils removed for water bodies must be removed, segregated, and stockpiled, but not replaced within the impoundment. These soils are to be reconstructed in the same way other prime farmland soils are reconstructed within the permit area and with the review and concurrence of the Nation Resource Conservation Service (NRCS, old Soil Conservation Service). OSM also stated that prime farmland soils may not be moved from a pre-mining location to a post-mining location within a permit area if the pre-mining area would not normally be disturbed in order to extract the coal, and, when the shifting of the location of prime farmland soils is part of a complete mining and reclamation plan, such soil relocation will be kept to a minimum, will be reviewed and concurred in by

the NRCS and must still meet the prime farmland soil reconstruction and bond release standards.

OSM did not discuss the location of the water body with respect to prime farmland soils. The plain language of New Mexico's rule and the Federal regulation requires that the water body be within the post-reclamation non-prime farmland portions of the permit area. Therefore, it could not be within the post-reclamation prime farmland portions of the permit area. The location of the water body with respect to the location of the prime farmland soils would be predicated by the requirement that the applicant demonstrate that the productivity of the prime farmland soils would be maintained. We also note that protection of all non-prime farmland topsoil is required and it would not be placed beneath a reclaimed water body.

Because New Mexico's proposed rules at 19.8.24.2400.C NMAC are substantively identical to the Federal regulations at 785.17(e)(5), the Director, as discussed in Finding No. III.B above, is approving them. The Director is not requiring that New Mexico take any action in response to BLM's comments.

#### *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. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. NM-854). EPA did not respond to our request.

#### *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 December 10, 2001, we requested comments on New Mexico's amendment (Administrative Record No. NM-854). ACHP did not respond to our request.

The SHPO responded with a letter dated January 10, 2002 (Administrative Record No. NM-856), with the following comment concerning New

Mexico's proposed rule at 19.8.9.912.A NMAC.

New Mexico's proposed 19.8.9.912.A NMAC requires that an applicant for a proposed operation that may have an adverse effect on any publicly owned parks or any places listed on the National Register of Historic Places shall include a plan describing the measures to be used to prevent adverse impacts, or designed to minimize adverse impacts when valid existing rights exist or joint agency approval is to be obtained under 19.8.2.202.E NMAC.

SHPO recommended that New Mexico's proposed rule at 19.8.9.912.A NMAC include a reference to the State Register of Cultural Properties to ensure adequate protection to properties listed only on the State Register and not listed on the National Register.

Properties on the State Register of Cultural Properties include properties that are listed on the National Register of Historic Places, are in the process of being listed on the national register, and would likely be eligible for listing on the National Register of Historic Places. Properties that would be eligible for listing on the National Register of Historic Places would be protected under proposed 19.8.9.912.B NMAC. New Mexico's rule at 19.8.9.912.B NMAC provides that the Director of the New Mexico program may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

Proposed 19.8.9.912.A and B NMAC are identical to the Federal regulations at 30 CFR 780.31(a) and (b). The Federal regulations and New Mexico's proposed rules do provide for more stringent protection of public parks and places listed on the National Register of Historic Places. However, applications that may impact cultural and historic resources are sent by the Director of the New Mexico program to the SHPO for review and comment. New Mexico would take seriously all recommendations from the SHPO and would likely, under 19.8.9.912B NMAC, require mitigation of any adverse impacts.

Because OSM cannot require that New Mexico promulgate rules that are more stringent than the Federal regulations, the Director, as discussed in Finding No. III.B above, is approving New Mexico's proposed rules. The

Director is not requiring that New Mexico take action in response to this comment.

#### **V. OSM's Decision**

Based on the above findings, we approve New Mexico's November 28, 2001, 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.

#### **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 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)).

*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 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), 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; 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 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: June 3, 2002.

**Brent T. Wahlquist,**  
*Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR 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 July 15, 2002, to read as follows:

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

\* \* \* \* \*

Original submission date	Date of final publication	Citation/description
* November 28, 2001	* July 15, 2002	* * * * * 19.8.1.7.F(5); 19.8.1.7N(2); 19.8.1.7.O(5); 19.8.1.7.P(12); 19.8.1.7.Q(1); 19.8.2.201; 19.8.2.202.A through H; 19.8.2.203; 19.8.3.300.C; 19.8.6.602.A and 603; 19.8.7.704.C; 19.8.8.801.B; 19.8.8.802.A; 19.8.9.912.A and B; 19.8.11.1106.D; 19.8.13.1307; 19.8.14.1412.A; 19.8.14.1415.A; 19.8.19.1900.A, C and C(2); 19.8.20.2009.E and E(5); 19.8.20.2057.A; 19.8.20.2058.A; 19.8.24.2400.C; 19.8.29.2900.G and H; 19.8.31.3107.A; 19.8.32.3200.B; 19.8.32.3203.A and B; 19.8.32.3206.A; and 19.8.35.7 through 14 NMAC.



**§ 931.16 [Amended]**

3. Section 931.16 is amended by removing and reserving paragraphs (e), (u) and (v).

[FR Doc. 02-17651 Filed 7-12-02; 8:45 am]

BILLING CODE 4310-05-P

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[CGD09-02-011]

RIN 2115-AA97

**Security Zones; Captain of the Port Toledo Zone, Lake Erie**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing two permanent security zones on the navigable waters of Lake Erie in the Captain of the Port Toledo Zone. These security zones are necessary to protect the Enrico Fermi 2 Nuclear Power Station and the Davis Besse Nuclear Power Station from possible acts of terrorism. These security zones are intended to restrict vessel traffic from a portion of Lake Erie off the Enrico Fermi 2 and the Davis Besse Nuclear Power Stations.

**DATES:** This rule is effective July 15, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09-02-011] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Herb Oertli, Chief of Port Operations, Marine Safety Office Toledo, at (419) 418-6050.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On May 8, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Captain of the Port Toledo Zone, Lake Erie" in the **Federal Register** (67 FR 30846). We received 10 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal**

**Register**. The permanent security zones being established by the rulemaking are smaller in size than the temporary security zones currently in effect. By immediately implementing the smaller zone size, we will be relieving some of the burden placed on the public by a larger security zone. In addition, the temporary security zones currently in place may impact several private residences, the smaller permanent security zones ensure that these residences are not adversely impacted.

**Background and Purpose**

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in the destruction of the World Trade Center, significant damage to the Pentagon, and tragic loss of life. National security and intelligence officials warn that future terrorists attacks are likely.

This rule establishes a permanent security zone off the waters of Enrico Fermi 2 Nuclear Power Station, Newport, Michigan. This security zone includes waters and adjacent shoreline within a boundary commencing at 41°58.4' N, 083°15.4' W; then northeast to 41°58.5' N, 083°15.0' W; then southeast to 41°58.2' N, 083°13.7' W; then south to 41°56.9' N, 083°13.8' W; then west to 41°56.9' N, 083°15.2' W; then back to the starting point at 41°58.4' N, 083°15.4' W. These coordinates are based upon North American Datum 1983 (NAD 83).

This rule also establishes a permanent security zone off the waters of Davis Besse Nuclear Power Station, Port Clinton, Ohio. This security zone includes waters and adjacent shoreline within a boundary commencing at 41°36.1' N, 083°04.7' W; then north to 41°37.0' N, 083°03.9' W; east to 41°35.9' N, 083°02.5' W; southwest to 41°35.4' N, 083°03.7' W; then west following the shoreline back to the point of origin (NAD 83).

These security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Toledo, or his authorized representative, are prohibited from entering or moving within these zones. The Captain of the Port Toledo may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Toledo's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of this security zone, exact

location and the restrictions involved via Local Notice To Mariners.

**Discussion of Comment and Changes**

The Coast Guard received 10 comments on the proposed rulemaking. Eight comments support the establishment of security zones around the nuclear power stations. The only concern of those in favor of the establishment of security zones was that Coast Guard ensure the permanent security zones do not encompass the beachfront of any private residences. The two comments against establishing permanent security zones questioned the impact of having security zones.

Three comments recommended changes to the security zone coordinates surrounding the Davis Besse Nuclear Power Station. The commenters noted that the Coast Guard's beginning coordinate for the security zone around the David Besse Power Station (41°36.3' N, 083°04.9' W) included several private residences. The comments requested the Coast Guard identify a new starting coordinate that excludes the private residences. After conducting an updated security risk assessment of the facility, the Coast Guard concurs with these comments and has identified the new starting coordinate as 41°36.1' N, 083°04.7' W (NAD 83).

Two comments opposed the security zone around the Enrico Fermi 2 Power Station, one questioning the impact of a security zone and the other stating that allowing fishermen in the area is a better way to protect the area. The security zones create a clear area in which unauthorized persons are readily detectable. This area, coupled with Coast Guard patrols, the assistance of state, local, and the nuclear power plant security personnel, all help to create an area to detect and respond to unauthorized individuals or vessels. Currently, the Captain of the Port Toledo believes that this method is the most effective way of deterring waterborne security threats to these nuclear facilities.

**Regulatory Evaluation**

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory