

### Public Meeting

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

### List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 30, 2005.

**Allen D. Klein,**

*Director, Western Region.*

[FR Doc. E6-2005 Filed 2-10-06; 8:45 am]

**BILLING CODE 4310-05-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 931

[SATS No. NM-044]

#### New Mexico Regulatory Program

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

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

**SUMMARY:** We are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposes revisions to statutes concerning administrative review of decisions and the award of attorney's fees and legal costs. New Mexico intends to revise its program to be consistent with the corresponding provisions of SMCRA and clarify the administrative and judicial review process.

This document gives the times and locations that the New Mexico program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.s.t. March 15, 2006. If

requested, we will hold a public hearing on the amendment on March 10, 2006. We will accept requests to speak until 4 p.m., m.s.t. on February 28, 2006.

**ADDRESSES:** You may submit comments, identified by "SATS No. NM-044", by any of the following methods:

- E-mail: [WGAINER@OSMRE.GOV](mailto:WGAINER@OSMRE.GOV). Include "SATS No. NM-044" in the subject line of the message.
- Mail/Hand Delivery/Courier: Willis Gainer, Chief, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 248-5096.

E-mail address: [wgainer@osmre.gov](mailto:wgainer@osmre.gov).

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and SATS No. NM-044. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** Access to the docket, to review copies of the New Mexico program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Albuquerque Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Willis Gainer, Chief, Albuquerque Field Office Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, NM 87102 Telephone: (505) 248-5096, E-mail address: [wgainer@osmre.gov](mailto:wgainer@osmre.gov).

Bill Brancard, Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Santa Fe, NM 87505, Telephone: (505) 476-3400.

#### FOR FURTHER INFORMATION CONTACT:

Willis L. Gainer Telephone: (505) 248-5096. E-mail address: [wgainer@osmre.gov](mailto:wgainer@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the New Mexico Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. 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 the conditions of approval of the New Mexico program 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. Description of the Proposed Amendment

By letter dated November 18, 2005, New Mexico sent us a proposed amendment to its program (administrative record No. 874) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment in response to a condition of the New Mexico program approval at 30 CFR 931.11(e), concerning the award of attorney's fees and legal costs, and to include the changes made at its own initiative to clarify the administrative and judicial appeals process. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

New Mexico proposes revisions, described below, of the New Mexico Surface Mining Act (NMSA) 1978 and New Mexico Annotated Code (NMAC). The proposed revisions of NMSA 1978 were adopted by the New Mexico legislature and became effective June 17, 2005. The proposed revisions of NMAC were adopted by the Coal Surface Mining Commission on November 16, 2005, but will not become effective until they are published in the New Mexico Register.

New Mexico proposes stylistic editorial revisions to update citations and grammar of NMSA 1978 at (1) Section 69-25A-18.A., B., C., D., and F., concerning the decisions of the director of the New Mexico program and

appeals, and (2) Section 69–25A–29.A., B., C., D., E., and F., concerning the administrative review of a notice or order by the director of the New Mexico program.

New Mexico proposes to revise NMSA 1978 at Section 69–25A–29.F, concerning administrative review and the assessment of costs and expenses, including attorney fees, for a person's participation in the administrative proceedings, including judicial review of agency actions, by deleting the provision stating that no such assessment shall be imposed upon the director of the New Mexico program.

New Mexico proposes to revise NMSA 1978 at Section 69–25A–29, concerning administrative review, by deleting entirely 69–25A–29.G., which provided for an appeal to the commission for relief by any person aggrieved by a decision of the director of the New Mexico program.

New Mexico proposes stylistic editorial revisions of NMSA 1978, at Section 69–25A–30A. and B., concerning judicial review, to update grammar and clarify that appeals to the district court may be made by a party who is aggrieved by a decision of the director of the New Mexico program.

New Mexico proposes revision of NMSA 1978 at Section 69–25A–36, concerning termination of agency life, to extend the authority of the Coal Surface Mining Commission to operate according to the provisions of NMSA from July 1, 2005, until July 1, 2012.

New Mexico proposes editorial revisions, stylistic in nature, to correct citations and/or clarify sentence or paragraph structure, of NMAC at the following sections:

Section 19.8.11.1100.A.(3), D., and D.(2), concerning public notices of filing of permit applications;

Section 19.8.11.1101.C., concerning opportunity for submission of written comments on permit applications;

Section 19.8.11.1102.A and B.(2), concerning the right to file written objections;

Section 19.8.11.1103.A.(3), B., B.(1), D., E.(1), and F., concerning hearings and conferences;

Section 19.8.11.1104.B, concerning public availability of information in permit applications on file with the director;

Section 19.8.11.1105.C.(2), D., E., and F., concerning review of permit applications;

Section 19.8.11.1106.C., D.(3), F., G.(1) and (2), and N., concerning criteria for permit approval or denial;

Section 19.8.11.1107.A., B., B.(1), B.(1)(b), B.(3), C., D., E., and F.,

concerning general procedures for imprudently issued permits;

Section 19.8.11.1108.B, concerning existing structures and criteria for permit approval or denial;

Section 19.8.11.1109.A.(4), B., B.(1) and (2), B.(2)(b), B.(3), and D., concerning permit approval or denial actions;

Section 19.8.11.1110.A.(1), concerning the rescission process for imprudently issued permits;

Section 19.8.11.1111.B., concerning permit terms;

Section 19.8.11.1113.C.(2), concerning conditions of permit for environment, public health and safety;

Section 19.8.11.1114., concerning conformance of permit;

Section 19.8.11.1115.A., B., and C., concerning verification of ownership or control application information;

Section 19.8.11.1116.B. and B.(2)(b), concerning review of ownership or control and violation information;

Section 19.8.11.1117.A., A.(1), (2) and (3), B., C., D., D.(1) and (2), and D.(2)(a) and (b), concerning procedures for challenging ownership or control links shown in the applicant violator system; and

Section 19.8.11.1118.B, B.(1), (2) and (3), B.(3)(1), C., C.(1)(a) through (c), and C.(2), concerning standards for challenging ownership or control links and the status of violations.

New Mexico proposes to revise Section 10.8.12.1201 NMAC, concerning appeals for administrative review by the Coal Surface Mining Commission of decisions by the director of the New Mexico program, by deleting it entirely and reserving it.

New Mexico proposes to revise Section 10.8.12.1202 NMAC, concerning judicial review, to state that (1) a party to a proceeding before the director who is aggrieved by a director's decision issued after a hearing may obtain a review of that decision pursuant to Section 39–3–1.1 NMSA 1978; and (2) a person who is or may be aggrieved by a rule or an amendment or repeal of a rule the commission adopts may appeal to the court of appeals for review pursuant to Subsection B of 69–25A–30 NMSA 1978.

New Mexico proposes editorial revisions of Section 19.8.12.1203.A through J. and L. NMAC, concerning formal review of notices of violation, cessation orders, and show cause orders by the director of the New Mexico program, that are stylistic in nature to clarify the grammar and sentence structure.

New Mexico proposes revision of Section 19.8.12.1203.K NMAC, concerning formal review of notices of

violation, cessation orders, and show cause orders issued by the director of the New Mexico program, to state that the district court may review the director's decisions pursuant to Subsection G of Section 69–25A–29 NMSA 1978 and 19.8.12.1202. NMAC.

New Mexico proposes to revise Part 19.8.12.1200 NMAC by adding Section 19.8.12.1204.A through G, concerning petitions for award of legal costs and expenses, to specify who may file, time and place for filing, contents of the petition, timeframe for response to the petition, who may receive an award, what the award may include, and where to appeal a decision concerning the award of such legal costs and expenses.

### III. Public Comment Procedures

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

#### *Written Comments*

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your written comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Albuquerque Field Office may not be logged in.

#### *Electronic Comments*

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. NM–044" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248–5096. In the final rulemaking, we will not consider or include in the administrative record any electronic comments received after the time indicated under **DATES** or at e-addresses other than the Albuquerque Field Office.

#### *Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not

consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

#### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on February 28, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

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

#### *Public Meeting*

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

#### **IV. Procedural Determinations**

##### *Executive Order 12630—Takings*

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

##### *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. 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.

The rule does not involve or affect Indian tribes in any way.

##### *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. 4321 *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: December 14, 2005.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

[FR Doc. E6-1976 Filed 2-10-06; 8:45 am]

**BILLING CODE 4310-05-P**

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 935**

**[OH-250-FOR]**

#### **Ohio Regulatory Program**

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

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

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Ohio regulatory program (the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio proposes to revise the Ohio Revised Code (ORC) regarding changes

to the State's alternate bonding system (bond pool). The amendment is intended to satisfy a program condition codified in the Federal regulations.

This document gives the times and locations that the Ohio program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** Written comments must be received on this amendment on or before 4 p.m. (local time), March 15, 2006 to ensure our consideration. If requested, we will hold a public hearing on the amendment on March 10, 2006. We will accept requests to speak until 4 p.m., local time, on February 28, 2006.

**ADDRESSES:** You may submit comments, identified by "OH-250-FOR", by any of the following methods:

- E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov). Include "OH-250-FOR" in the subject line of the message;
- Mail/Hand Delivery: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pennsylvania 15220; or
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Docket:** You may review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Pittsburgh Field Division listed below.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pennsylvania 15220. Telephone: (412) 937-2153. E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

Mr. Michael Sponsler, Chief, Division of Mineral Resources Management, Ohio

Department of Natural Resources, 1855 Fountain Square Court-Bldg. H-2, Columbus, Ohio 43224. Telephone: (614) 265-6633.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Rieger, Chief, Pittsburgh Field Division, Telephone: (412) 937-2153. E-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the Ohio Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

#### **I. Background on the Ohio 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 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 the Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to the 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 Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 16, 1982, **Federal Register** (47 FR 34687). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

#### **II. Description of the Proposed Amendment**

By letter dated December 19, 2005, Ohio sent us a proposed amendment to its program (Administrative Record Number OH-2185-07) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio has submitted a draft bill for the Ohio legislature to consider that revises the ORC regarding changes to the State's alternate bonding system (bond pool). The amendment is intended to satisfy a program condition codified in the Federal regulations at 30 CFR 935.11(h). The program condition provides that Ohio must submit a program amendment that demonstrates how the alternative bonding system will assure timely reclamation at the site of all operations for which bond has been forfeited.

In addition to the revisions described in detail below, the amendment submitted by Ohio contains numerous changes to existing citations to reflect