

purposes of the taxable income limitation under section 199(a)(1)(B), just as in *Example 1*. Thus, for purposes of determining B's taxable income limitation in 2011, B is considered to have taxable income of \$1,500, and B has a section 199 deduction of 9% of \$1,500, or \$135.

*Example 4.* Corporations A, B, and C are the only members of an EAG. A, B, and C are all calendar year taxpayers and they do not join in the filing of a consolidated Federal income tax return. None of the EAG members (A, B, or C) had taxable income or loss prior to 2010. In 2010, A has QPAI of \$2,000 and taxable income of \$1,000, B has QPAI of \$1,000 and an NOL of \$1,000, and C has QPAI of \$1,000 and an NOL of \$3,000. In 2011, prior to the NOL deduction allowed under section 172, A and B each has taxable income of \$200 and C has taxable income of \$5,000. In determining the EAG's section 199 deduction for 2010, A's QPAI of \$2,000, B's QPAI of \$1,000, and C's QPAI of \$1,000 are aggregated, as are A's taxable income of \$1,000, B's NOL of \$1,000, and C's NOL of \$3,000. Thus, for 2010, the EAG has QPAI of \$4,000 and taxable income of (\$3,000). In determining the EAG's taxable income limitation under section 199(a)(1)(B) in 2011, \$1,000 of B's and C's aggregate NOLs in 2010 of \$4,000 are considered to have been used in 2010 to reduce the EAG's taxable income to \$0, in proportion to their NOLs. Thus, \$250 of B's NOL from 2010 (\$1,000 x \$1,000/\$4,000) and \$750 of C's NOL from 2010 (\$1,000 x \$3,000/\$4,000) are deemed to have been used in 2010. The remaining \$750 of B's NOL and the remaining \$2,250 of C's NOL are not deemed to have been used because so doing would have reduced the EAG's taxable income in 2010 below \$0. Accordingly, for purposes of determining the EAG's taxable income limitation in 2011, B is deemed to have a \$750 NOL carryover from 2010 and C is deemed to have a \$2,250 NOL carryover from 2010. Thus, for purposes of determining the EAG's taxable income limitation, B's taxable income in 2011 is \$0 and C's taxable income in 2011 is \$2,750, which are aggregated with A's \$200 taxable income. B's unused NOL carryover from 2010 cannot be used to reduce either A's or C's 2011 taxable income. Thus, the EAG's taxable income limitation in 2011 is \$2,950, A's taxable income of \$200 plus B's taxable income of \$0 plus C's taxable income of \$2,750.

■ **Par. 11.** Section 1.199-8 is amended by adding new paragraphs (i)(5) and (6) to read as follows:

**§ 1.199-8 Other rules.**

\* \* \* \* \*

(i) \* \* \*

(5) *Tax Increase Prevention and Reconciliation Act of 2005.* [Reserved]. For further guidance, see § 1.199-8T(i)(5).

(6) *Losses used to reduce taxable income of expanded affiliated group.* [Reserved]. For further guidance, see § 1.199-8T(i)(6).

■ **Par. 12.** Section 1.199-8T is amended by adding new paragraphs (i)(5) and (6) to read as follows:

**§ 1.199-8T Other rules (temporary).**

\* \* \* \* \*

(i) \* \* \*

(5) *Tax Increase Prevention and Reconciliation Act of 2005.* Sections 1.199-2T(e)(2), 1.199-3T(i)(7) and (8), and 1.199-5T are applicable for taxable years beginning on or after October 19, 2006. A taxpayer may apply §§ 1.199-2T(e)(2), 1.199-3T(i)(7) and (8), and 1.199-5T to taxable years beginning after May 17, 2006, and before October 19, 2006 regardless of whether the taxpayer otherwise relied upon Notice 2005-14 (2005-1 CB 498) (see § 601.601(d)(2) of this chapter), the provisions of REG-105847-05 (2005-47 IRB 987) (see § 601.601(d)(2) of this chapter), or §§ 1.199-1 through 1.199-8. The applicability of §§ 1.199-2T(e)(2), 1.199-3T(i)(7) and (8), and 1.199-5T expires on October 19, 2009.

(6) *Losses used to reduce taxable income of expanded affiliated group.* Section 1.199-7T(b)(4) is applicable for taxable years beginning on or after October 19, 2006. A taxpayer may apply § 1.199-7T(b)(4) to taxable years beginning after December 31, 2004, and before October 19, 2006 regardless of whether the taxpayer otherwise relied upon Notice 2005-14 (2005-1 CB 498) (see § 601.601(d)(2) of this chapter), the provisions of REG-105847-05 (2005-47 IRB 987) (see § 601.601(d)(2) of this chapter), or §§ 1.199-1 through 1.199-9. The applicability of § 1.199-7T(b)(4) expires on October 19, 2009.

**Mark E. Matthews,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: October 12, 2006.

**Eric Solomon,**  
*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. E6-17402 Filed 10-18-06; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 931**

[NM-045-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 proposed revisions to and additions of rules and revisions to statutes concerning the administrative appeals process and revisions to statutes concerning an extension of time for the authority of the Coal Surface Mining Commission (Commission). New Mexico revised its program to be consistent with SMCRA and the corresponding Federal regulations, streamline and clarify the administrative and judicial appeals process and ensure continuing authority for the New Mexico program.

**EFFECTIVE DATE:** October 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** Willis 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. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM) 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 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 18, 2005, New Mexico sent us an amendment to its program (Administrative Record No. 874) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment to include the changes made at its own

initiative to (1) Streamline and clarify the administrative and judicial appeals process and (2) extend the time for the authority of the Commission to operate.

We announced receipt of the proposed amendment in the February 13, 2006, **Federal Register** (71 FR 7477; Administrative Record No. NM-882). 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. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 15, 2006. We received one agency comment from the State Historic Preservation Officer and one public comment from the Zuni Tribe.

During our review of the amendment, we identified one non-substantive editorial concern with an incorrect statutory citation referenced in a proposed rule. We notified New Mexico of this concern by letter dated March 24, 2006 (Administrative Record No. NM-887).

New Mexico responded in a letter dated March 27, 2006, by sending us a revised amendment (Administrative Record No. NM-888). New Mexico responded with a revision to correct the statutory cite, from the New Mexico Surface Mining Act of 1978 (NMSA), section 69-25A-30.G to NMSA, section 69-25A-29.A, referenced at proposed rule New Mexico Annotated Code (NMAC), section 19.8.12.1203.K. Because the correction was editorial in nature and did not substantively revise New Mexico's proposed amendment, we did not reopen the opportunity for public comment and we are proceeding with the final rule **Federal Register** document.

### 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 as described below.

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

New Mexico proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved statutes in NMSA, and rules in the NMAC.

NMSA, sections 69-25A-18.A, B, C, D and F concerning the decisions of the Director of the New Mexico program and appeals;

NMSA, sections 69-25A-29.A, B, C, D and F concerning the administrative

review of a notice or order by the Director of the New Mexico program;

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

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

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

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

NMAC, section 19.8.11.1104.B, concerning public availability of information in permit applications on file with the Director;

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

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

NMAC, sections 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;

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

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

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

NMAC, section 19.8.11.1111.B, concerning permit terms;

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

NMAC, section 19.8.11.1114, concerning conformance of permit;

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

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

NMAC, sections 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;

NMAC, sections 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; and

NMAC, sections 19.8.12.1203.A through J and L, concerning formal review of notices of violations, cessation orders and show cause orders.

Because these changes are minor, we find that they will not make New

Mexico's rules and statutes less effective than the corresponding Federal regulations or less stringent than SMCRA.

#### B. Revisions to New Mexico's Statutes and Rules That Require an Explanation and Basis for Approval

The Federal regulations at 30 CFR 732.15(b) require, among other things, that a State program include provisions that provide for (1) Administrative review of State program actions, in accordance with section 525 of SMCRA and 30 CFR Subchapter L, and (2) judicial review of State program actions in accordance with State law, as provided in section 526(e) of SMCRA, except that judicial review of State enforcement actions shall be in accordance with section 526 of SMCRA.

The Federal definitions at 30 CFR 730.5 set forth the standards for review of State program provisions which must be consistent with and in accordance with the Act and the counterpart Federal regulations. OSM defines consistent with and in accordance with to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

As discussed below, New Mexico's proposed revisions of NMSA and the State's implementing regulations are in accordance with the corresponding sections of SMCRA and consistent with the Federal regulations.

1. NMSA, Section 69-25A-29.G, and NMAC, Section 19.8.12.1201, Elimination of Appeals for Review by the Commission of Decisions of the Director of the New Mexico Program

At its own initiative, New Mexico proposes to eliminate the provisions in NMSA at 69-25A-29.G and in NMAC, section 19.8.12.1201 that require administrative review by the Commission of decisions by the Director of the New Mexico program.

States must provide for administrative review of State program actions, in accordance with section 525 of SMCRA and 30 CFR subchapter L. States must also have a permit system which provides for review of decisions consistent with 30 CFR subchapter G. Section 525 of SMCRA and subchapter G require one level of administrative review. New Mexico is retaining its statutory provisions for administrative review of enforcement actions by the

Director of the New Mexico program in NMSA section 69–25A–29 and permitting decisions in NMSA section 69–25A–18. New Mexico also is retaining regulations at NMAC, section 19.8.12.1203, for administrative review of enforcement actions by the Director of the New Mexico program. The elimination of administrative review by the Commission leaves in place existing provisions for administrative review conducted by the Director of the New Mexico program for decisions concerning permitting and enforcement actions.

OSM finds that New Mexico's proposed revisions concerning administrative review at NMSA, section 69–25A–29.G, and NMAC, section 19.8.12.1201, are consistent with the Act and the Federal regulations, and the revisions will not make New Mexico's statutes and rules less stringent than section 525 of SMCRA or less effective than 30 CFR subchapters L and G.

2. NMSA, Section 69–25A–30.A, and NMAC, Sections 19.8.12.1202.A and 19.8.12.1203.K, Appeals of Decisions by the Director of the New Mexico Program to the State District Court

New Mexico proposes revisions of NMSA, section 69–25A–30.A, concerning judicial review, to clarify that appeals to a State District Court may be made by a party who is aggrieved by a decision of the Director, rather than the Commission, of the New Mexico program. Likewise, New Mexico proposes to revise NMAC, sections 10.8.12.1202.A and 19.8.12.1203.K, concerning judicial review, to state respectively 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 NMSA section 39–3–1.1, and (2) the State District Court may review decisions concerning formal review of notices of violation, cessation orders, and show cause orders issued by the Director of the New Mexico program, pursuant to Subsection G of section 69–25A–30, NMSA, and NMAC 19.8.12.1202.

Existing NMAC 19.8.12.1202.A through D established procedures for judicial review of administrative decisions under the New Mexico program. New Mexico proposes to eliminate the procedures in NMAC 19.8.12.1202.A through D and revise NMAC 19.8.12.1202.A to require that appeals to State District Court will be subject to section 39–3–1.1 of the NMSA. Section 39–3–1.1 is applicable to all New Mexico State agencies for appeal of final agency decisions to the State District Court and covers

procedures for application and scope of review.

The Federal regulation at 30 CFR 732.15(b)(15) requires State programs to provide for judicial review of State program actions in accordance with State laws, as provided in section 526(e) of SMCRA, except that judicial review of State enforcement actions shall be in accordance with section 526 of SMCRA. Section 526(e) of SMCRA requires that actions of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law. Sections 526(a) through (d) of SMCRA establish procedures for such judicial review of enforcement actions. Section 526(a) specifies that actions constituting rulemaking and orders or decisions in a civil penalty proceeding, issued by the Secretary of the Interior, may be subject to judicial review; it also provides the location and timeframe for filing of a petition for judicial review. Section 526(b) specifies the actions of the court hearing such a petition. Section 526(c) specifies the circumstances necessary for a court to grant temporary relief in the case of a proceeding to review any order or decision for cessation of coal mining and reclamation operations. Section 526(d) specifies that the commencement of a proceeding for judicial review shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the Secretary. There are no Federal regulations that set forth procedures for judicial review.

The procedures set forth in NMSA 39–3–1.1 apply to judicial review of any final decision by a New Mexico agency, and among other things, specify how final agency decisions must be documented and published, provide for appeal of a decision by any person aggrieved by the decision, specify the actions that may be taken by the district court, and provide for review of the State District Court decision by a party to the appeal.

The procedures set forth by New Mexico in NMSA 39–3–1.1 provide for similar procedures concerning judicial review set forth in SMCRA at sections 526(a) through (d) and demonstrate the ability for a person to obtain judicial review of all agency decisions as required by SMCRA at section 526(e).

These proposed revisions are also consistent with New Mexico's revisions discussed in finding B.1 above that eliminate administrative review by the Commission of decisions, other than those concerning promulgation of rules, by the Director. (See finding No. 3 below for New Mexico's provisions

concerning judicial review of agency rulemaking decisions.)

Therefore, OSM finds that the proposed revisions concerning judicial review at NMSA, section 69–25A–30.A, and at NMAC, sections 10.8.12.1202.A and 19.8.12.1203.K are consistent with the Act and the Federal regulations and the revisions will not make New Mexico's statutes and rules less stringent than section 526 of SMCRA or less effective than 30 CFR subchapters L and G.

3. NMAC, Section 19.8.12.1202.B, Judicial Review of Decisions by the Commission Concerning Adoption of a Rule, Amendment of a Rule or Repeal of a Rule

Existing NMAC 19.8.12.1202.E provides that persons aggrieved by a rule or amendment or repeal of a rule the Commission adopts may appeal to the State Court of Appeals. The existing regulation also includes procedures and timeframes for such an appeal as well as the standards for review by the court. As described in finding B.2 above, New Mexico proposes to eliminate existing NMAC 19.8.12.1202.B, C and D so that New Mexico's existing NMAC 19.8.12.1202.E becomes NMAC 19.8.12.1202.B. New Mexico proposes to eliminate the existing procedures, timeframe and standards in proposed NMAC 19.8.12.1202.B and instead proposes to cross-reference the statutory provision at NMSA, Subsection B of 69–25A–30, which sets forth the same procedures, timeframes and standards for judicial review.

30 CFR 732.15(b)(15) requires that State programs provide for judicial review of State program actions in accordance with State law, as provided in section 526(e) of the Act. Section 526(e) states that actions of the State regulatory authority shall be subject to judicial review by a court of competent jurisdiction in accordance with State law. There are no Federal regulations for section 526(e) of the Act.

OSM finds that New Mexico's proposed NMAC 19.8.12.1202.B, concerning judicial review of rulemaking by the Commission, and the reference to NMSA, subsection B of 69–25A–30, are in accordance with the requirements of section 526(e) of SMCRA for judicial review.

4. NMSA, Section 69–25A–29.F, Administrative Review of a Notice or Order by the Director of the New Mexico Program

New Mexico proposes to revise NMSA, section 69–25A–29.F, concerning administrative review, by deleting references to the Commission.

With these revisions, New Mexico removed authority from the Commission and left authority with the Director of the New Mexico program to determine whether expenses (that have been reasonably incurred for or in connection with participation in administrative proceedings, including any judicial review of agency actions) may be assessed against any party.

Section 525(e) of SMCRA allows for an award of a sum equal to the aggregate amount of all costs, expenses, and attorney fees determined by the Secretary of the Interior to have been reasonably incurred by a person for or in connection with his participation in administrative proceedings, including any judicial review of agency actions.

As discussed in finding No. B.1. above, New Mexico's proposed revisions to delete the additional administrative review by the Commission of the Director's decisions, is consistent with section 525 of SMCRA. OSM finds that New Mexico's proposed revisions to NMSA, section 69-25A-29.F, deleting references to the Commission, are consistent with and no less stringent than section 525(e) of SMCRA.

#### 5. NMSA, Section 69-25A-36, Termination of Agency Life

New Mexico proposes revisions of NMSA at section 69-25A-36, concerning termination of agency life, to extend the authority of the Commission to operate according to the provisions of NMSA from July 1, 2005, until July 1, 2012.

The Commission, created in NMSA at section 69-25A-1, meets at least once a year to adopt, amend and repeal rules. SMCRA, at section 503(a), and the Federal regulation at 30 CFR 732.15(a) requires that the State program provide for the State to carry out the provisions and meet the purposes of SMCRA within the State and that the State's laws and regulations are in accordance with the provisions of SMCRA. Because New Mexico's proposed revision extends the authority of the Commission to operate until July 1, 2012, and therefore enables rulemaking for the New Mexico program, OSM approves the proposed revision.

#### IV. Summary and Disposition of Comments

##### Public Comments

We asked for public comments on the amendment (Administrative Record No. NM-876). We received one comment letter.

By letter dated February 2, 2006 (Administrative Record No. NM-879),

we received comments from the Governor of the Zuni Tribe in Zuni, New Mexico. Our response to the Governor's comments regarding New Mexico's proposed rule revisions at NMAC, section 19.8.12.1202.A, concerning judicial review of final agency decisions, is discussed below.

The Governor raised a concern that the proposed revision to NMAC, section 19.8.12.1202.A, would limit a person's ability to challenge agency decisions.

New Mexico's proposed revisions at NMAC, sections 19.8.12.1201 and 19.8.12.1202.A eliminate the need for a second administrative hearing before the Commission prior to allowing an appeal to the State District Court; this rule revision reflects the same statutory revision of the NMSA at section 69-25A-29.G.

As discussed in finding No. B.2 above, New Mexico's proposed elimination of the opportunity for a second administrative hearing is consistent with the counterpart Federal regulations at 30 CFR 775.13.

The Governor also expressed concern that because only certain agency decisions can be the subject of an administrative hearing, some decisions may not therefore be appealed to the State District Court.

As discussed in finding B.1 above, New Mexico's proposed revision of NMSA, section 69-25A-30.A, and NMAC, sections 19.8.12.1202.A and 19.8.12.1203.K, provide for appeals of decisions by the Director to the State District Court. New Mexico's NMSA, section 69-25A-29, provides for administrative review of enforcement actions and NMSA, section 69-25A-18, provides for administrative review of permitting decisions. New Mexico is also retaining regulations at NMAC, section 19.8.12.1203, for administrative review of enforcement actions by the Director. The elimination of administrative review by the Commission leaves in place existing provisions for administrative review conducted by the Director for decisions concerning both permitting and enforcement actions and appeal of these decisions to the State District Court. Therefore, New Mexico's proposed revision is consistent with and in accordance with section 526 of SMCRA and 30 CFR subchapters L and G.

The Governor also correctly noted that the existing New Mexico rule at NMAC, section 19.8.12.1200.A, allows an administrative appeal of, among other final decisions made by the Director of the New Mexico program, a decision concerning a permit modification; this opportunity for review has not been revised. OSM notes

that New Mexico's allowance for an administrative appeal of a decision concerning a permit modification at NMAC section 19.8.12.1200.A is not specifically required under the counterpart Federal regulation at 30 CFR 775.11(a) (see OSM's approval of NMAC, section 19.8.12.1200.A, on April 13, 2004, 69 FR 19321, at 19322, finding No. C.2.).

For the reasons discussed above, we are not requiring any revision of New Mexico's proposed rules in response to these comments.

##### 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-876). We received no 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 pertains to air or water quality standards. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. NM-876). 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 20, 2006, we requested comments on New Mexico's amendment (Administrative Record No. NM-876). The SHPO responded on February 9, 2006, that it had no comments because the proposed amendments do not affect cultural resources (Administrative Record No. NM-881). We did not receive a response from the ACHP.

#### V. OSM's Decision

Based on the above findings, we approve New Mexico's November 18, 2005, proposed amendment, as revised on March 27, 2006.

We approve New Mexico's proposed statutory revisions as they were enacted by New Mexico (effective on June 17,

2005) and rule revisions as promulgated by New Mexico (effective on April 28, 2006).

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 demonstrate 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 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).

### *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: September 11, 2006.

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 18, 2005, as revised on March 27, 2006.	* October 19, 2006 ...	* NMSA, sections 69–25A–18.A, B, C, D and F, concerning the decisions of the Director and appeals; NMSA, sections 69–25A–29.A, B, C, D, and F, concerning the administrative review of a notice or order by the Director; NMSA, sections 69–25A–29.G, concerning deletion of statutes allowing for review by the Commission of decisions of the Director; NMSA, section 69–25A–30.A, concerning judicial review of final decisions by the Director; NMSA, sections 69–25A–36, concerning termination of agency life; NMAC, sections 19.8.11.1100.A(3), D, and D(2), concerning public notices of filing of permit applications; NMAC, section 19.8.11.1101.C, concerning opportunity for submission of written comments on permit applications; NMAC, sections 19.8.11.1102.A and B(2), concerning the right to file written objections; NMAC, sections 19.8.11.1103.A(3), B, B(1), D, E(1), and F, concerning hearings and conferences; NMAC, section 19.8.11.1104.B, concerning public availability of information in permit applications on file with the Director; NMAC, sections 19.8.11.1105.C(2), D, E, and F, concerning review of permit applications; NMAC, sections 19.8.11.1106.C, D(3), F, G(1) and (2), and N, concerning criteria for permit approval or denial; NMAC, sections 19.8.11.1107.A, B, B(1), B(1)(b), B(3), C, D, E, and F, concerning general procedures for improvidently issued permits; NMAC, section 19.8.11.1108.B, concerning existing structures and criteria for permit approval or denial; NMAC, sections 19.8.11.1109.A(4), B, B(1) and (2), B(2)(b), B(3), and D, concerning permit approval or denial actions; NMAC, section 19.8.11.1110.A(1), concerning the rescission process for improvidently issued permits; NMAC, section 19.8.11.1111.B, concerning permit terms; NMAC, section 19.8.11.1113.C(2), concerning conditions of permit for environment, public health and safety; NMAC, section 19.8.11.1114, concerning conformance of permit; NMAC, sections 19.8.11.1115.A, B, and C, concerning verification of ownership or control application information; NMAC, sections 19.8.11.1116.B and B(2)(b), concerning review of ownership or control and violation information; NMAC, sections 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; NMAC, sections 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; NMAC, section 19.8.12.1201, deletion of rules allowing for review by the Commission of decisions of the Director; NMAC, sections 19.8.12.1202.A, concerning judicial review of final decisions by the Director; NMAC, sections 19.8.12.1202.B, concerning judicial review of decisions by the Commission; and NMAC, sections 19.8.12.1203.A through L, concerning formal review of notices of violations, cessation orders, and show cause orders.

[FR Doc. E6–17521 Filed 10–18–06; 8:45 am]  
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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law)

has determined that USS HAWAII (SSN 776) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** Effective Date: October 5, 2006.

**FOR FURTHER INFORMATION CONTACT:** Commander C. J. Spain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This

amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS HAWAII(SSN 776) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(c) pertaining to the arc of visibility of the stern light; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k) pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance