

## Surface Mining Reclamation and Enforcement, Interior

## § 931.13

11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

14. Executive Order 11988 (May 24, 1977), for flood plain protection.

15. Executive Order 11990 (May 24, 1977), for wetlands protection.

16. Executive Order 12898 (February 11, 1994) for Federal Actions to Address Environmental Justice on Minority Populations and Low Income Populations.

17. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

18. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

19. The Constitution of the United States.

20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

21. 30 CFR Chapter VII.

22. The Constitution of the State of Montana.

23. Montana Strip and Underground Mine Reclamation Act (MSUMRA), part 2, Chapter 4, Title 82, Montana Code Annotated.

24. Title 26, Chapter 4, Subchapter 3, Administrative Rules of Montana.

25. Montana Environmental Policy Act (MEPA).

[63 FR 40794, July 30, 1998]

### PART 931—NEW MEXICO

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AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 45 FR 86489, Dec. 31, 1980, unless otherwise noted.

#### § 931.1 Scope.

This part contains all rules applicable only within New Mexico that have

been adopted under the Surface Mining Control and Reclamation Act of 1977.

#### § 931.10 State regulatory program approval.

The New Mexico State Program as submitted on February 28, 1980, and amended and clarified on June 11, 1980, August 7, 1980, and September 10, 1980, was conditionally approved, effective December 31, 1980. Copies of the approved program together with copies of the letter of the New Mexico Energy and Minerals Department, Division of Mining and Minerals, agreeing to the conditions in 30 CFR 931.11 are available at:

(a) Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 2040 South Pacheco Street, Santa Fe, NM 87505.

(b) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

[47 FR 47380, Oct. 26, 1982, as amended at 55 FR 17607, Apr. 26, 1990; 59 FR 17933, Apr. 15, 1994]

#### § 931.11 Conditions of the State program approval.

The approval of the State program is subject to the following conditions:

(a)-(j) [Reserved]

[45 FR 86489, Dec. 31, 1980, as amended at 47 FR 23153, 23155, May 27, 1982; 47 FR 47380, Oct. 26, 1982; 48 FR 28088, June 20, 1983; 49 FR 30691, Aug. 1, 1984; 71 FR 69195, Nov. 30, 2006]

#### § 931.13 Preemption of New Mexico laws and regulations.

Under the authority of sections 505(b) of SMCRA, 30 U.S.C. 1255(b), and in accordance with the position taken by the State of New Mexico, the following provisions of New Mexico law and regulation are hereby preempted and superseded as they may apply to coal exploration and surface coal mining and reclamation operations:

The State Wildlife Conservation Act (17-2-37 to 17-2-46 NMSA 1978) to the extent it is inconsistent with provisions of SMCRA related to the Endangered Species Act of 1973 (16 USC 1531 *et seq.*).

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

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these

amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
February 28, 1982 .....	May 27, 1982 .....	Procedures for Posting and Publishing Notices of Show Cause Orders.
July 9, 1982 .....	October 26, 1982 .....	CSMC 80-1-19-15(d), 80-1-20-71(i), 20-102(a); 80-1-29-12(b), definition of "Unconsolidated Stream-laid Deposits Holding Streams".
February 8, 1984 .....	August 1, 1984 .....	CSMC 80-1-14-23(a), (b).
June 6, 1984 .....	January 4, 1985 .....	CSMC 80-1-1-5 definition of roads; 80-1-20-150, 151.
June 20, 1984, July 18, 1984.	January 31, 1985 .....	CSMC 80-1-1-11; 80-1-11-30; 80-1-20-103.
August 12, 1987 .....	February 11, 1988 .....	CSMC 80-1-30-12(c) through (l).
September 1, 1988 .....	January 30, 1989 .....	CSMC 80-2-22-29(p).
June 17, 1987 .....	March 9, 1989 .....	CSMC 80-1-5-25, -26; 80-1-8-11; 80-1-9-18; 80-1-11-27, 80-1-20-89, -102, -103, -106, -181; 80-1-29-11; 80-1-33 Training, Examination, and Certification of Blasters.
April 18, 1988, October 20, 1988.	March 17, 1989 .....	CSMC 80-1-20-71(b), -81, -83(b), -85, -92(b).
February 21, 1989, August 17, 1989.	December 26, 1989	CSMC 80-1-20-41(d)(1), -42(a)(1).
March 29, 1989, April 26, 1989.	April 26, 1990 .....	CSMC 80-1-20-83(b), -89(d)(2), -103(a)(1); 80-1-29-11(a); 80-1-33-11, -14, -15(e)(1).
May 25, 1989 .....	November 23, 1990	CSMC 80-1-1-5, definitions of "affected area," "self-bond"; 80-1-8-20; 80-1-9-16; 80-1-14-23(d)(2), -40(a)(2); 80-1-20-97(b), (c); 80-1-31-21 through -24; July 12, 1990 Policy Statement.
July 22, 1989 .....	February 26, 1991 .....	CSMC 80-1-1-5, definition of "other treatment facilities;" 80-1-20-41(f), -46, (a), -49.
April 24, 1990 .....	June 21, 1991 .....	CSMC 80-1-20-42(a)(8), -133(c).
March 15, 1990 .....	December 31, 1991	CSMC 80-1-1-5, definitions of "cumulative impact area," "previously mined area," "excess spoil," "impoundment," "coal processing waste," "coal processing waste bank;" 80-1-2-11(f), -12(b)(2); 80-1-4-15(b); 80-1-6-10, -11(b)(5), -12(b)(7), -13(d); 80-1-8-14(b)(1)(vi), -15(c), -16(b)(3), -24, -27(a); 80-1-9-13(f), -14(c), -21(b) through (d); 80-1-10-13, (a), (c), (e), -17(a)(1)(i), (6); 80-1-11-11(a)(3), -15(a), (b), -19(c), -27(e); 80-1-13-11(a), -12(c), (d), -18(c)(3), (d), (e); 80-1-20-11(f), -41(a), -43(a), -44(a), -52(a), (b), -57(a)(1), (2), -61 through -68, -71(f), (j), (k), -82(a), -91(c), -97(d)(10), -102(a), (f), (g), -111(c), -112(c), (d); 80-1-24-11(c), -12(a)(1), -15(c)(2) through (6); 80-1-26-12(c); 80-1-29-16(a); 80-1-30-13(d); 80-1-31-17(b)(1), 18(b)(1); Policy Statement for Records and Retention.
July 9, 1991 .....	April 13, 1992 .....	CSMC 80-1-20-42(a)(4)(ii), (a)(8).
November 22, 1991 .....	June 23, 1992 .....	CSMC 80-1-20-72(d), -83(b).
January 16, 1991 .....	December 17, 1993	CSMC 80-1-1-5, definition of "owned or controlled and owns and controls;" 80-1-4-15(b)(2); 80-1-7-13(a) through (j); -14(a) through (d); 80-1-9-21(c), -25(b), (c), (e), -37(a) through (e), -39(b), -40; 80-1-11-17(c), (2), (3), (d), (e), -19(i), -20(a), (b)(1), (i), (iii), (2), (i), (ii), (3), (c), (1) through (4), -24(a), (b), (c), -29(d); 80-1-19-15(c)(2), (3), (4), -17(a), (b); 80-1-20-91(c), -93(a), (c), (d), (e), -116(a), (b)(1), (3), (6), (7), (d) through (d)(3), -117(a) through (d), (1), (2), (3)(i), -121(a), -124, -150(a)(2)(i), (iii), (b)(9), (c), (e)(1), (g)(5), (6), (7), -151(a), (b)(2), (c)(1), (6); 80-1-30-11(b), (l); NMSA 69-25A-31.
October 26, 1994 .....	February 15, 1995 .....	CSMC 80-1-34-1 through 10.
January 22, 1996 .....	May 29, 1996 .....	CSMC 80-1-1-5 definitions of "Applicant/violator system" or "AVS," "Federal violation notice," "Ownership or control link," "State violation notice," and "Violation notice;" "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," "Replacement of water supply;" "OSM," "Qualified Laboratory," "Road," "SMCRA;" 80-1-4-15(b)(1); 80-1-7-14(c) (1) through (5); 80-1-9-25(a)(2), (3), (c), -39(a) (1) through (6), (b), (c)(1) through (9); 80-1-11-17(c), (d), -19(i), -20(b)(1), (ii), (3), (c)(1), (2), (d), (e), -24(a), -29(d), -31(a) through (d), -32(a) through (c), -33 (a) through (d), -34(a) through (d); 80-1-19-15(c)(2), (3), (iii), (4); 80-1-20-41(e)(3)(i), -49(d), (e)(1) through (11), (f)(2), (g)(4), (5), -82(a)(4), -89(d)(2), -93(a)(1), -97(b), (c), -116(b)(1), (5), (6), -117, (c)(1), (3), (4), (d)(2), (3)(i), -124(a) through (d), -125(a) through (e), -127, -150(c).
January 6, 1998 .....	June 8, 1998 .....	19 NMAC 8.2, Subparts 1 through 34 (recodification).
March 11, 1996 .....	April 10, 2000 .....	19 NMAC 8.2 813.K (1) through (3); 813.L; 1106.C; 1412.A(2) (i) through (vii); 2054.A (1), (2), (3), and (5); 2055.C(1); 2076.B; and 2077.A.

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Original amendment submission date	Date of final publication	Citation/description
November 13, 1998 ..	September 11, 2000	19 NMAC 8.2 107.M(1); 107.O(2); 1107; 909.E(5); 918.D; 2017.D, F(2), G(4), and G(5); 2065.B(5)(iv); and 2071.A through D.
December 1, 1999 ....	November 2, 2000 ..	19 NMAC 8.2 107.I(8); 107.A(20); 507.A(1); 2064; 2065.A; 2065.B(1), (2), (3), and (5)(iii); and the Coal Mine Reclamation Program Vegetation Standards guidance document.
September 22, 2000 November 28, 2001 ..	January 18, 2001 ... July 15, 2002 .....	19 NMAC Parts 1 through 34 (recodification) 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.
October 27, 2003 .....	April 13, 2004 .....	19.8.1.7.P(8) and (9); 19.8.1.7.T(2); 19.8.5.506.A, B, D, E, F, and G; 19.8.12.1200.A; 19.8.13.1300.B; 19.8.13.1301.A(1), B, C, and E(1) and E(2); 19.8.20.2073 (C), (D), (E), and (F) NMAC
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.
November 18, 2005 ..	November 30, 2006	NMSA, sections 69–25A–29.F, concerning award of legal costs and expenses; and NMAC, sections 19.8.12.1204.A through G, concerning award of legal costs and expenses, including attorney fees.
November 28, 2007 ..	November 18, 2008	19 NMAC Parts 1 through 35 (recodification), 19.8.1.7.G(1); 19.8.11.1100.D(1); 19.8.11.1102.A; 19.8.11.1103.A; 19.8.11.1109.B and C; 19.8.13.1301.E(1) and E(2)(b); 19.8.13.1307.B(2); 19.8.14.1412.A(2)(f); 19.8.14.1412.F; 19.8.20.2065.A and B(1); 19.8.20.2068; 19.8.30.3000; 19.8.31.3108.B; 19.8.31.3110.B; 19.8.5.504.D; 19.8.7.701.F; 19.8.8.812.D; 19.8.11.1100.B(1), (2), (3), and (4), D(5), E(3), and F; 19.8.11.1103.B, E, and F; 19.8.13.1301.E(2)(a); 19.8.31.3106.B(3)(a).
September 1, 2010 ...	January 30, 2012. ..	19 NMAC 8.1.7.K; 8.1.7.O(8)(a) and (b); 8.1.7.W(2)(a) and (b); 8.7.701.C(3); 8.11.1105.E; 8.11.1105.F; 8.11.1114; 8.11.1119.A through H; 8.11.1120.A through C; 8.11.1121.A through D; 8.20.2010.A(2)(a) and (b) (deletion); 8.30.3000.L; 8.30.3003.D; 8.30.3004.D; 8.31.3103.A; 8.31.3109.A; 8.31.3109.A(1) through (3) (deletion); 8.31.3113.A, B, and C; 8.34.3402.F(1) and (2); 8.34.3408.C(2) and (3); and 8.35.13.

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**30 CFR Ch. VII (7-1-25 Edition)**

[62 FR 9947, Mar. 5, 1997, as amended at 63 FR 31113, June 8, 1998; 65 FR 18894, Apr. 10, 2000; 65 FR 54794, Sept. 11, 2000; 65 FR 65778, Nov. 2, 2000; 66 FR 4673, Jan. 18, 2001; 67 FR 46384, July 15, 2002; 69 FR 19325, Apr. 13, 2004; 71 FR 61685, Oct. 19, 2006; 71 FR 69195, Nov. 30, 2006; 73 FR 68345, Nov. 18, 2008; 77 FR 4466, Jan. 30, 2012]

**§ 931.16 Required program amendments.**

Pursuant to 30 CFR 732.17, New Mexico is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a)-(aa) [Reserved]

[55 FR 48841, Nov. 23, 1990, as amended at 56 FR 28486, June 21, 1991; 56 FR 67527, Dec. 31, 1991; 57 FR 12723, Apr. 13, 1992; 58 FR 65929, Dec. 17, 1993; 61 FR 26836, May 29, 1996; 65 FR 18894, Apr. 10, 2000; 65 FR 54795, Sept. 11, 2000; 65 FR 65779, Nov. 2, 2000; 67 FR 46385, July 15, 2002]

**§ 931.20 Approval of the New Mexico abandoned mine reclamation plan.**

The New Mexico Abandoned Mine Reclamation Plan as submitted on September 29, 1980, and amended February 4, 1981, is approved. Copies of the approved program are available at the following locations:

Original amendment submission date	Date of final publication	Citation/description
July 24, 1995 .....	July 24, 1996 .....	Plan §§ 874.16, 875.16, .20, 886.23(c); NMSA 69-25B-3.A, C, D, -4, -6.B, -7, -8.

[62 FR 9948, Mar. 5, 1997]

**§ 931.26 Required plan amendments.**

Pursuant to 30 CFR 884.15, New Mexico is required to submit for OSM's approval the following proposed plan amendments by the date specified.

(a) By January 21, 1997, New Mexico shall revise NMSA 69-25B-2 and 3.B to provide references to August 3, 1977, the effective date of SMCRA, or otherwise modify its plan, to ensure that the reclamation of post-August 3, 1977, sites is specifically provided for with counterpart provisions to sections 402(g)(4) and 403(b)(2).

(b) By January 21, 1997, New Mexico shall further revise NMSA 69-25B-3.B to provide a definition for "eligible lands and water" that is consistent with the term as defined at section 404 of SMCRA.

(a) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

(b) Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 2040 South Pacheco Street, Santa Fe, NM 87505.

[59 FR 17933, Apr. 15, 1994]

**§ 931.25 Approval of New Mexico abandoned mine land reclamation plan amendments.**

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

(c) By January 21, 1997, New Mexico shall revise NMSA 69-25B-6.A, or otherwise modify its plan, to reflect the same expenditure priorities as counterpart section 403(a) of SMCRA.

(d) By January 21, 1997, New Mexico shall revise NMSA 69-25B-6.A by deleting NMSA 69-25B-6.A(4) and item No. I (d) of the "Ranking and Selection" section of its plan.

(e) By January 21, 1997, New Mexico shall revise NMSA 69-25B-6.C by reinserting the word "coal."

[61 FR 38381, July 24, 1996]

**§ 931.30 State-Federal cooperative agreement.**

The State of New Mexico (State) acting through the Governor and the Department of the Interior (Department)

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acting through the Secretary enter into a Cooperative Agreement (Agreement) to read as follows:

### ARTICLE I: INTRODUCTION AND PURPOSE

1. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an agreement with the Secretary for the regulation and control of surface coal mining and reclamation operations on Federal lands and by section 69-25A-27 NMSA 1978 of the Surface Mining Act (State Act).

The Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands within the State consistent with the State and Federal Acts, the State program (Program) (30 CFR part 931) and the Federal Lands Program (30 CFR parts 740-745). The term "Federal lands" is defined in the Federal Act and State and Federal regulations.

2. The purpose of this Agreement is to (a) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniformity by effective application of the State program to Federal lands in New Mexico.

### ARTICLE II: EFFECTIVE DATE

3. This Cooperative Agreement is effective following signing by the Secretary and the Governor, and upon publication as a final rule in the FEDERAL REGISTER. This Agreement shall remain in effect until terminated as provided in Article XII.

### ARTICLE III: SCOPE

4. This Agreement makes the laws, regulations, terms and conditions of the Program conditionally approved effective December 31, 1980 (30 CFR part 931), or as hereinafter amended in accordance with 30 CFR 732.17, applicable to Federal lands within the State except as otherwise stated in this Agreement, the Federal Act, 30 CFR part 745 or other applicable Federal laws. Orders and decisions issued in accordance with the Program by the Mining and Minerals Division (Mining and Minerals) of the New Mexico Energy and Minerals Department that are appealable shall be appealed to the State reviewing authority. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

### ARTICLE IV: RESPONSIBILITIES

5. Mining and Minerals is and shall continue to be the sole agency responsible for

administering this cooperative agreement on behalf of the Governor on Federal lands throughout the State. Mining and Minerals has and shall continue to have authority under State law to carry out this Agreement. The Office of Surface Mining (OSM) of the Department of the Interior shall administer this Agreement of behalf of the Secretary in accordance with the regulations in 30 CFR Chapter VII.

6. To eliminate duplication and overlap, the State will assume the primary responsibility for the review and analysis of permit applications and applications for permit revisions or renewals, subject to legal restrictions, including those limitations in 30 U.S.C. 1272(b) and 1273 and in 42 U.S.C. 4321-4335. The State shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal Act and the Program.

### ARTICLE V: FUNDING

7. The State will devote adequate funds to the administration and enforcement of this Agreement of Federal lands within the State. If this Agreement has been carried out, and subject to appropriations, the Department shall provide the State with funds to defray the costs associated with carrying out responsibilities under this Agreement, as provided in 30 U.S.C. 1295(c) and 30 CFR 735.16. Reimbursement shall be in the form of annual grants, and applications for said grants shall be processed and awarded in a timely and prompt manner.

If sufficient funds have not been appropriated to OSM, OSM and Mining and Minerals shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program.

Funds provided to the State shall be adjusted in accordance with Office of Management and Budget (OMB) Circular A-102, Attachment E.

### ARTICLE VI: REPORTS, FEES AND EQUIPMENT

8. Mining and Minerals shall make annual reports to OSM containing information respecting its compliance with the terms of this Agreement pursuant to 30 CFR 745.12(c). The State and OSM shall exchange, upon request, except where prohibited by Federal law, information developed under this Agreement. OSM shall provide Mining and Minerals with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

9. The amount of the fee accompanying an application for a permit shall be determined in accordance with New Mexico Coal Surface Mining Commission Rule 80-1, part 5-25. All permit fees shall be retained by the State and deposited with the State Treasurer in

the Oil and Gas Conservation Fund. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of fees collected during the prior State fiscal year.

10. Mining and Minerals will assure itself access to equipment, laboratories and facilities with which all inspections, investigations, studies, tests and analyses can be performed, and which are necessary to carry out the requirements of this Agreement.

#### ARTICLE VII: PERMIT APPLICATION PACKAGE

11. Mining and Minerals and OSM shall require an operator on Federal lands to submit a permit application package or an application for a permit revision or renewal in an appropriate number of copies to Mining and Minerals. Any documentation or information submitted by the operator for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, will be forwarded to the Minerals Management Service (MMS). If such documentation is submitted as part of a permit application package, a copy of the entire package will be forwarded to MMS.

The permit application package or application for a permit revision or renewal shall be in the form required by Mining and Minerals, shall satisfy the requirements of 30 CFR 741.12(b) and 30 CFR 741.13, and shall include the information required by, or necessary for, Mining and Minerals and the Secretary to make a determination of compliance with:

- (a) Section 69-25A-1, *et seq.*, NMSA 1978;
- (b) New Mexico Coal Surface Mining Commission Rule 80-1;
- (c) Applicable terms and conditions of the Federal coal lease;
- (d) Applicable requirements of the 30 CFR part 211 regulations pertaining to the Mineral Leasing Act requirements; and
- (e) Applicable requirements of the approved Program and other Federal laws including, but not limited to, those identified in 30 CFR Chapter VII, Subchapter D and appendix A of this Agreement.

12. Mining and Minerals shall assume the primary authority pursuant to sections 510(a) and 523(c) of the Federal Act for the analysis, review, and approval of the permit application or application for a permit revision or renewal according to the standards of the Program. OSM shall assist Mining and Minerals in the analysis of the permit application or application for a permit revision or renewal according to the procedures set forth in appendix B. The Department shall concurrently carry out its responsibilities under the Mineral Leasing Act, as amended (MLA), the National Environmental Policy Act (NEPA), and other public laws (including but not limited to those in appendix A) that cannot, under the Federal Act, be delegated to the State. The Department shall carry out

these responsibilities according to the procedures set forth in appendix B so as to avoid, to the maximum extent possible, duplication of the responsibilities of the State set forth in this Agreement and the State Program. The Secretary will consider the information in the permit application package and, where appropriate, make the decisions required by the Federal Act, MLA, NEPA and other public laws listed above.

13. Mining and Minerals shall be the primary point of contact with the operator. The Department will independently initiate contacts with the applicant regarding permit application packages or applications for a permit revision or renewal only where necessary to carry out its statutory responsibilities. When such action may generate correspondence with the applicant, a copy of all correspondence with the applicant that may have a bearing on decisions regarding the mining operation shall be sent to Mining and Minerals.

14. Mining and Minerals shall maintain a file of all original correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the permit application package or application for a permit revision or renewal. At the request of the Secretary or his designated agents, Mining and Minerals shall make available the Mining and Minerals files and send copies of such correspondence and information when requested to do so.

15. To the fullest extent allowed by State and Federal law, OSM and Mining and Minerals shall cooperate so that duplication will be eliminated in conducting the review and analysis of the permit application package or application for a permit revision or renewal.

16. Mining and Minerals will review the permit application or application for a permit revision or renewal under sections 11-11 through 11-29 of the New Mexico Coal Surface Mining Commission Rule 80-1.

#### ARTICLE VIII: INSPECTIONS

17. Mining and Minerals shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with its Program.

18. Mining and Minerals shall, subsequent to conducting any inspection on Federal lands, file with OSM on a timely basis, an inspection report adequately describing (1) the general conditions of the lands; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

19. Mining and Minerals will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements

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covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent inspections by authorized Federal agencies for purposes other than those covered by this Agreement.

20. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 743.

21. Except as provided below, the Secretary shall give Mining and Minerals reasonable notice of his intent to conduct an inspection in order to provide State inspectors an opportunity to join in the inspection. The Secretary reserves the right to conduct inspections without prior notice to Mining and Minerals to carry out his responsibilities under the Federal Act.

### ARTICLE IX: ENFORCEMENT

22. Mining and Minerals shall be the primary enforcement authority under the Federal Act concerning compliance with the requirements of this Agreement and the Program. Enforcement authority of the Secretary under other laws and orders including, but not limited to, those listed in appendix A is reserved to the Secretary.

23. During any joint inspection by OSM and Mining and Minerals, Mining and Minerals shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation and assessment of penalties. OSM and Mining and Minerals shall consult prior to issuance of any decision to suspend or revoke a permit.

24. Mining and Minerals and OSM shall promptly notify each other of all violations of applicable laws, regulations, orders, approved mining plans and permits subject to this Agreement and of all actions taken with respect to such violations.

25. During any inspection made solely by OSM or any joint inspection where Mining and Minerals and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845.

Such enforcement action shall be based on the performance standards included in the regulations of the Program, and the procedures and penalty system contained in 30 CFR parts 843 and 845. This Agreement does not limit the Department's authority to enforce violations of standards and requirements of Federal laws other than the Federal Act.

26. Personnel of the State and the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

### ARTICLE X: BONDS

27. For all surface coal mines on Federal lands, Mining and Minerals and the Sec-

retary shall require all operators to submit a single performance bond to cover the operator's responsibilities under the Federal Act and the Program, payable to the State, and if required by Federal regulations in Subchapter D, the United States. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law and release of the bond shall be conditioned upon compliance with all applicable State and Federal requirements. If the cooperative agreement is terminated, the bonds will revert to being payable only to the United States to the extent that Federal lands are involved. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR 3474 or a lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Federal Act.

28. Prior to releasing the operator from an obligation under the performance bond required by the Program for any Federal lands, Mining and Minerals shall obtain the consent of OSM. Mining and Minerals shall also advise OSM of adjustments to the performance bond.

29. The operator's performance bond shall be subject to forfeiture with the consent of the Department, in accordance with the procedures and requirements of the Program.

### ARTICLE XI: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING

30. Mining and Minerals and the Director shall cooperate with each other in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition that could impact adjacent Federal or non-Federal lands, the agency receiving the petition shall (1) notify the other of receipt and of the anticipated scheduled for reaching a decision; and (2) request and fully consider data, information and the views of the other.

The authority to designate State and private lands as unsuitable for mining is reserved to the State. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

### ARTICLE XII: TERMINATION OF COOPERATIVE AGREEMENT

31. This Agreement may be terminated by the State or the Department under the provisions of 30 CFR 745.15.

### ARTICLE XIII: REINSTATEMENT OF COOPERATIVE AGREEMENT

32. If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

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### ARTICLE XIV: AMENDMENTS OF COOPERATIVE AGREEMENT

33. This Agreement may be amended by mutual agreement of the State and the Department. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after Federal rulemaking in accordance with 30 CFR 745.11. The party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

### ARTICLE XV: CHANGES IN STATE OR FEDERAL STANDARDS

34. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the State Program, and under the procedures of section 501 of the Federal Act for changes to the Federal Lands Program.

35. The State and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Agreement.

### ARTICLE XVI: CHANGES IN PERSONNEL AND ORGANIZATION

36. The State and the Department shall, consistent with 30 CFR 745.12, advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions and persons within their organizations. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the Program. The State and the Department shall advise each other in writing of changes in the location of offices, addresses, telephone numbers and changes in the names, locations and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

### ARTICLE XVII: DEFINITIONS

37. Terms and phrases used in this Agreement which are defined in the Federal Act, 30 CFR 700, 701, and 740, and defined in the New Mexico Surface Mining Act (69-25A-1, *et seq.*, NMSA 1978) and the rules and regulations promulgated pursuant to that Act,

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shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved Program will apply, except in the case of a term which defines the Secretary's remaining responsibilities under the Federal Act and other laws.

### ARTICLE XVIII. RESERVATION OF RIGHTS

38. In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in appendix A.

Dated: December 7, 1982.

Bruce King,  
*Governor of New Mexico.*

Dated: November 24, 1982.

James G. Watt,  
*Secretary of the Interior.*

### APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701, *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.*, and implementing regulations including 30 CFR part 211.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, and implementing regulations including 40 CFR part 1500 *et seq.*
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations including 36 CFR part 800.
6. The Clean Air Act, 42 U.S.C. 7401, *et seq.*, and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
9. The Reservoir Salvage Act of 1960, as amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
10. Executive Order 11593, Cultural Resource Inventories on Federal Lands.
11. Executive Order 11988 for Flood Plain Protection. Executive Order 11990 for Wetlands Protection.
12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351, *et seq.*, and the implementing regulations.
13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291, *et seq.*

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14. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*

15. The Constitution of the United States.

16. The Constitution of the State and State law.

### APPENDIX B—PROCEDURE FOR COOPERATIVE REVIEW OF PERMIT APPLICATION PACKAGES AND APPLICATIONS FOR PERMIT REVISIONS OR RENEWALS FOR FEDERAL COAL MINES IN NEW MEXICO

#### *I: Point of Contact and Coordination During the Review of Permit Application Packages and Applications for Permit Revisions and Renewals*

A. The New Mexico Mining and Minerals Division (Mining and Minerals) will:

1. Be the point of contact and coordinate communications with the applicant on issues concerned with the development, review and approval of permit application packages or applications for permit revisions or renewals, except on issues concerned with the requirements of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. 181, *et seq.*, or National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the requirements of other Federal laws not addressed in the applications.

2. Communicate with the applicant on issues of concern to the appropriate Federal land management agency (FLMA) and immediately advise FLMA and OSM of such issues and communication.

3. Communicate with the applicant on issues of concern to the Office of Surface Mining (OSM), and immediately advise OSM of such issues and communications.

4. Communicate with the applicant on issues of concern to the Minerals Management Service (MMS) and immediately advise MMS and OSM of such issues and communications as they pertain to the application.

5. Communicate with the applicant on issues of concern to other agencies within the Department of the Interior, as appropriate, and immediately advise such agencies of such issues and communications.

6. Provide OSM with a copy of each apparent completeness review upon completion.

B. MMS will:

1. Receive any documentation required by the 30 CFR part 211 regulations.

2. Be the point of contact with the applicant on issues concerned exclusively with the 30 CFR part 211 regulations.

3. Provide Mining and Minerals and OSM with copies of pertinent correspondence.

C. OSM will: Be responsible for ensuring that any information OSM receives which has a bearing on decisions regarding the permit application package or application for a permit revision or renewal is sent promptly to Mining and Minerals.

#### *II: Receipt and Distribution of Permit Application Packages and Applications for Permit Revisions and Renewals*

A. Mining and Minerals will:

1. Receive the permit application package, the application for a permit revision or renewal or the correspondence from the applicant and transmit an appropriate number of copies to FLMA, MMS, OSM and other agencies specified by the Secretary after the application has been filed. Such transmittal will include a request for a conference on the submissions, as needed.

2. Identify an application manager responsible for coordinating the review and notify OSM, MMS and FLMA as necessary.

3. Upon receipt of an application, meet with OSM to discuss the application and agree upon a schedule, and, when Mining and Minerals requests assistance, agree upon a work plan with OSM.

B. OSM, MMS and FLMA will: Identify an application manager upon receipt of the application and notify Mining and Minerals of the identity of the application manager.

#### III: DETERMINATION OF COMPLETENESS

Mining and Minerals will:

1. Determine the completeness of a permit application package or application for a permit revision or renewal.

2. Issue public notice of the availability of complete applications for the public to review in accordance with the public review procedure set forth in New Mexico Coal Surface Mining Commission Rule 80-1, part 11.

#### IV: DETERMINATION OF PRELIMINARY FINDINGS OF SUBSTANTIVE ADEQUACY

A. Mining and Minerals will:

1. Consult with MMS, FLMA, OSM, and other Federal agencies specified by the Secretary to review the filed application for preliminary findings of substantive adequacy (henceforth "preliminary findings") and to assess the need for additional data requirements in their respective areas of responsibility.

2. Arrange meetings and field examinations with the interested parties as necessary to determine the preliminary findings.

3. Advise the applicant of the preliminary findings upon the advice and consent of FLMA, MMS, OSM and other Federal agencies specified by the Secretary.

4. Transmit the letter(s) informing the applicant of the preliminary findings, with copies to FLMA, OSM, MMS and other agencies specified by the Secretary.

5. When requested, furnish the Director with copies of correspondence with the applicant and all information received from the applicant.

B. OSM will:

1. Review the permit application package or application for a permit revision or renewal for preliminary findings and, at the request of Mining and Minerals, provide technical assistance as possible.

2. Furnish Mining and Minerals with preliminary findings within 45 calendar days of receipt of the permit application package or application for a permit revision or renewal and specify any requirements for additional data.

3. No later than 30 days from notification of completeness, initiate NEPA compliance procedures and determine the need for an Environmental Assessment or an Environmental Impact Statement.

4. Publish notices of NEPA documents as required by Federal law and regulations.

5. Participate, as arranged, in meetings and field examinations.

C. FLMA will:

1. Review the permit application package or application for permit revision or renewal for preliminary findings as to whether the applicant's proposed postmining land use is consistent with FLMA's land use plan, and the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

2. Furnish Mining and Minerals with preliminary findings within 45 calendar days of receipt of the permit application package or application for a permit revision or renewal and specify any requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

D. MMS will:

1. Review the permit application package or application for a permit revision or renewal in regard to MLA requirements.

2. Furnish Mining and Minerals with the preliminary findings within 45 calendar days of receipt of the permit application package or application for a permit revision or renewal and specify any requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

E. Other agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal for preliminary findings in regard to their responsibilities under law.

2. Furnish Mining and Minerals with preliminary findings within 45 calendar days of receipt of the application and specify any requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

V: FINDINGS OF TECHNICAL ADEQUACY AND NEPA COMPLIANCE

A. Mining and Minerals will:

1. Develop and coordinate the technical review of permit application packages or appli-

cations for a permit revision or renewal. The review will include representatives of Mining and Minerals, MMS, FLMA, OSM and other Federal agencies specified by the Secretary as appropriate.

2. Coordinate with OSM, for the purpose of eliminating duplication, and provide to OSM a complete technical analysis of the permit application or application for permit revision or renewal pursuant to the Federal Act and the Program that will serve as the technical base for an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) as may be required by NEPA for each permit application package or application for a permit revision or renewal.

3. Coordinate with MMS, for the purpose of eliminating duplication, to conduct a technical analysis that will assist MMS in making findings as may be necessary to determine compliance with the MLA.

4. Coordinate with FLMA, for the purpose of eliminating duplication, to conduct a technical analysis of issues regarding postmining land use and the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

5. Coordinate with other agencies specified by the Secretary, for the purpose of eliminating duplication, to conduct technical analyses of issues within their jurisdiction.

B. OSM will:

1. At the request of Mining and Minerals, assist as possible in the review of the permit application package or application for a permit revision or renewal for technical adequacy in a timely manner as set forth by a schedule developed by Mining and Minerals in cooperation with OSM.

2. Take the leadership role for the development of the EA and/or EIS.

C. MMS will:

1. Review the permit application package or application for a permit revision or renewal for compliance with 30 CFR part 211.

2. Furnish Mining and Minerals, through OSM, findings on compliance with 30 CFR part 211 in a timely manner as set forth by a schedule developed by Mining and Minerals in cooperation with MMS.

3. Participate, as arranged, in meetings and field examinations.

D. FLMA will:

1. Determine whether the permit application package or application for a permit revision or renewal provides for postmining land use consistent with FLMA's land use plan and determine the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

2. Furnish Mining and Minerals, through OSM, its determination on the technical adequacy in a timely manner as set forth by a schedule developed by Mining and Minerals in cooperation with FLMA.

3. Participate, as arranged, in meetings and field examinations.

E. Other agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal in regard to their responsibilities under law.

2. Furnish Mining and Minerals, through OSM, findings on compliance with other applicable Federal laws and regulations in a timely manner as set forth by a schedule developed in cooperation with Mining and Minerals.

3. Participate, as arranged, in meetings and field examinations.

#### VI: PREPARATION AND TRANSMITTAL OF THE DECISION DOCUMENT

A. Mining and Minerals will:

1. Assist OSM in the preparation of the decision document for the permit application package or application for a permit revision or renewal, unless the work plan and schedule agreed upon provide otherwise. Mining and Minerals will provide OSM with:

a. A recommendation on the proposal;

b. A finding of compliance with the Program as approved by the Secretary and the regulations promulgated thereunder, which will consist of an analysis of critical issues raised during the course of the review and the resolution of those issues; and

c. All other specific written findings required under section 69-25A-14, NMSA 1978.

2. Consider the comments of OSM, MMS and FLMA and other appropriate Federal agencies when assisting in the preparation of the decision document.

B. OSM will:

1. Prepare the approved NEPA compliance document.

2. Prepare the decision document with the assistance of Mining and Minerals unless the work plan and schedule agreed upon provide otherwise. The decision document shall contain the following:

a. An analysis of the environmental impacts of the proposal and alternatives to the proposal, prepared in compliance with NEPA, the Council on Environmental Quality regulations and OSM's NEPA compliance handbook;

b. The determinations and recommendations of FLMA;

c. The memorandum of recommendation from the MMS to the Assistant Secretary of the Interior for Energy and Minerals, with regard to MLA requirements;

d. The incorporation of the comments of other agencies specified by the Secretary, as appropriate; and

e. The relevant information submitted by Mining and Minerals as specified by A.1 of this Article.

3. Transmit the decision document to the Secretary.

C. FLMA will: Provide written concurrence on the final decision document to OSM with regard to postmining land use and the adequacy of measures to protect Federal resources not covered by rights granted by any Federal coal lease.

D. MMS will: Provide written concurrence on the final decision document to OSM with regard to its responsibilities.

E. Other agencies will: Provide written concurrence on the final decision document to OSM with regard to their responsibilities.

#### VII: DECISION AND PERMIT ISSUANCE

A. The Secretary will:

1. Evaluate the analysis, conclusions, and recommendations in the decision document as necessary to determine whether he approves or disapproves.

2. Inform Mining and Minerals immediately of his decision. Where the Secretary decides not to approve, the reasons for not approving, and recommendations for remedy shall be specified.

B. Mining and Minerals will:

1. Issue the permit, revised permit, or permit renewal for surface coal mining and reclamation operations after making a finding of compliance with the approved Program in the manner set forth in this Agreement.

2. Advise the operator, in the permit, of the necessity of obtaining Secretarial approval for those statutory requirements which have not been delegated to the State prior to directly affecting Federal lands and, if necessary, prohibit the operator from directly affecting Federal lands under the permit, revised permit, or permit renewal until after the Secretary's approval of the mining plan has been received.

3. Reserve the right to modify the permit, revised permit or permit renewal to conform with the Secretary's decision if a permit, revised permit, or permit renewal has been issued prior to receipt of the Secretary's decision.

#### VIII: RESOLUTION OF CONFLICT

A. Every effort will be made to resolve errors, omissions and conflicts on data and data analysis at the State and field level.

B. Areas of disagreement between the State and the Department shall be referred to the Governor and the Secretary for resolution.

(Sec. 523(c) of the Surface Mining Control and Reclamation Act of 1977; Pub. L. 95-87; (30 U.S.C. 1273(c)))

[47 FR 56806, Dec. 20, 1982, as amended at 54 FR 20568, May 12, 1989]

### PART 933—NORTH CAROLINA

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933.700 North Carolina Federal program.