

- (g) \* \* \*
- (2) \* \* \*
- (iii) \* \* \*

(B) [The text of the proposed amendment to § 1.1017–1(g)(2)(iii)(B) is the same as the text of § 1.1017–1T(g)(2)(iii)(B) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Par. 7.** Section 1.1368–1 is amended by revising paragraphs (f)(5)(iii) and (g)(2)(iii) to read as follows:

**§ 1.1368–1 Distributions by S corporations.**

\* \* \* \* \*

- (f) \* \* \*
- (5) \* \* \*

(iii) [The text of the proposed amendment to § 1.1368–1(f)(5)(iii) is the same as the text of § 1.1368–1T(f)(5)(iii) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

- (g) \* \* \*
- (2) \* \* \*

(iii) [The text of the proposed amendment to § 1.1368–1(g)(2)(iii) is the same as the text of § 1.1368–1T(g)(2)(iii) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Par. 8.** Section 1.1377–1 is amended by revising paragraph (b)(5)(i)(C) to read as follows:

**§ 1.1377–1 Pro rata share.**

\* \* \* \* \*

- (b) \* \* \*
- (5) \* \* \*
- (i) \* \* \*

(C) [The text of the proposed amendment to § 1.1377–1(b)(5)(i)(C) is the same as the text of § 1.1377–1T(b)(5)(i)(C) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Par. 9.** Section 1.1502–21 is amended by revising paragraphs (b)(2)(iii), (b)(3)(i) and (b)(3)(ii)(B) to read as follows:

**§ 1.1502–21 Net operating losses.**

\* \* \* \* \*

(b)(2)(iii) [The text of the proposed amendment to § 1.1502–21(b)(2)(iii) is the same as the text of § 1.1502–21T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

(3) \* \* \* (i) [The text of the proposed amendment to § 1.1502–21(b)(3)(i) is the same as the text of § 1.1502–21T(b)(3)(i) published elsewhere in this issue of the **Federal Register**.]

- (ii) \* \* \*

(B) [The text of the proposed amendment to § 1.1502–21(b)(3)(ii)(B) is

the same as the text of § 1.1502–21T(b)(3)(ii)(B) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Par. 10.** Section 1.1502–75 is amended by revising paragraph (h)(2) to read as follows:

**§ 1.1502–75 Filing of consolidated returns.**

\* \* \* \* \*

- (h) \* \* \*

(2) [The text of the proposed amendment to § 1.1502–75(h)(2) is the same as the text of § 1.1502–75T(h)(2) published elsewhere in the issue of the **Federal Register**.]

\* \* \* \* \*

**Par. 11.** Section 1.1503–2 is amended by revising paragraphs (g)(2)(i), (g)(2)(iv)(B)(3)(iii) and (g)(2)(vi)(B) to read as follows:

**§ 1.1503–2 Dual consolidated loss.**

\* \* \* \* \*

- (g) \* \* \*

(2) \* \* \* (i) [The text of the proposed amendment to § 1.1503–2(g)(2)(i) is the same as the text of § 1.1503–2T(g)(2)(i) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

- (iv) \* \* \*

(B) \* \* \*

(3) \* \* \*

(iii) [The text of the proposed amendment to § 1.1503–2(g)(2)(iv)(B)(3)(iii) is the same as the text of § 1.1503–2T(g)(2)(iv)(B)(3)(iii) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

- (vi) \* \* \*

(B) [The text of the proposed amendment to § 1.1503–2(g)(2)(vi)(B) is the same as the text of § 1.1503–2T(g)(2)(vi)(B) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Par. 12.** Section 1.6038B–1 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

**§ 1.6038B–1 Reporting of certain transfers to foreign corporations.**

\* \* \* \* \*

(b) \* \* \* (1) \* \* \* (i) [The text of the proposed amendments to § 1.6038B–1(b)(1)(i) is the same as the text of § 1.6038B–1T(b)(1)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) [The text of the proposed amendment to § 1.6038B–1(b)(1)(ii) is the same as the text of § 1.6038B–1T(b)(1)(ii) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**PART 301—PROCEDURE AND ADMINISTRATION**

**Par. 13.** The authority citation for part 301 continues to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 14.** Section 301.7701–3 is amended by revising paragraph (c)(1)(ii) to read as follows:

**§ 301.7701–3 Classification of certain business entities.**

\* \* \* \* \*

- (c) \* \* \* (1) \* \* \*

(ii) [The text of the proposed amendment to § 301.7701–3 (c)(1)(ii) is the same as the text of § 301.7701–3T(c)(1)(ii) published elsewhere in this issue of the **Federal Register**.]

\* \* \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 03–31239 Filed 12–18–03; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 931**

**[SATS No. NM–043–FOR]**

**New Mexico Regulatory Program**

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

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

**SUMMARY:** We are announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the “New Mexico program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposes revisions to and additions of rules about definitions of permit modification, permit revision, and temporary cessation of operations; permit fees; administrative review of decisions; review of permits; requirements for permit modifications; public hearings for permit modifications; and additional requirements for temporary cessation of operations. New Mexico intends to revise its program to clarify ambiguities, provide additional safeguards, and improve operational efficiency.

This document gives the times and locations that the New Mexico program and proposed amendment to that program are available for your inspection, the comment period during

which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.d.t. January 20, 2004. If requested, we will hold a public hearing on the amendment on January 13, 2004. We will accept requests to speak until 4 p.m., m.d.t. on January 5, 2004.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Willis Gainer at the address listed below.

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

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

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

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

#### **SUPPLEMENTARY INFORMATION:**

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

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

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior

conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.11, 931.15 and 931.30.

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

By letter dated October 27, 2003, New Mexico sent us a proposed amendment to its program (administrative record No. 869) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

New Mexico proposes non-substantive editorial revisions at 19.8.13.1301.A(4) and E(1) New Mexico Annotated Code (NMAC) concerning permit revisions and hearing and notice requirements. New Mexico also proposes the following substantive revisions at:

19.8.1.7.P NMAC by adding definitions at, respectively, 19.8.1.7.P(8) and (9) NMAC, of "permit modification" to mean an alteration of the terms or requirements of a permit, which alteration is not a permit revision, and "permit revision" to mean a significant alteration of the terms or requirements of a permit, as identified in 19.8.13.1301.A NMAC;

19.8.1.7.T NMAC by adding a definition of "temporary cessation of operations" at 19.8.1.7.T(2) NMAC to mean the cessation of mining or reclamation operations for more than thirty days and where a reasonable expectation of the continuation of mining can be demonstrated by the permittee;

19.8.5.506.A, B, D, E, F, and G NMAC, concerning permit and exploration fees, to, respectively, (1) increase the original permit filing fee to \$2,500 plus \$25 per acre for estimated area to be disturbed during the first year of mining, (2) commencing the second year to increase the annual permit fee to \$2,500 with an acreage fee of \$25 per acre of disturbed permit area for which the bond has not been released, provided that \$15,000 per year acreage fee is the maximum charge per year for all disturbance and cap the maximum annual fee at \$17,500 and require that the annual fee be submitted with the annual report; (3) increase the fee for transferring a permit to \$1000; (4)

increase the fee for a revision that expands the size of the permit to \$4000 plus \$25 per acre for the estimated area to be disturbed during the first year of mining in the expansion area and to require a fee for all other permit revisions of \$4000; (5) increase the fee for filing a notice of intention to explore to \$100; and (6) increase the fee for filing an application for exploration of greater than 250 tons of coal;

19.8.12.1200.A NMAC, concerning administrative review of permit and exploration decisions, to (1) provide the permittee or any person with an interest which is or may be adversely affected by the decision regarding a permit modification an opportunity to request a hearing on the reasons for the final decision and (2) require that any request for a hearing on any permit and exploration decision be made in writing and state with reasonable specificity the reasons for the request and objection to the decision;

19.8.13.1300.B NMAC to clarify that, at any time, the Director of the New Mexico program may, by order, require reasonable revisions or modification of the approved permit;

19.8.13.1301.B, C, and E(2) NMAC to (1) clarify that the existing language at 19.8.13.1301.A NMAC defines when a permit revision is required and to require that a permit modification be obtained for all other changes to a permit not classified as a permit revision; (2) to state that the operator may not implement any permit revision or permit modification before obtaining the Director's written approval; and (3) state that (a) within 10 days after the filing of a complete application for a permit modification, the Director shall issue a decision approving or denying the application in whole or in part and promptly provide a written copy of the decision to the permittee and other interested parties and (b) within 30 days after the decision notification, the permittee or any person may request a formal hearing in regard to the Director's decision, in accordance with 19.8.12.1200 NMAC; and

19.8.20.2073 NMAC, concerning temporary cessation of operations, by adding new C, D, E, and F, to state (1) at the Director's discretion, the permittee may be directed to take other reasonable actions consistent with 19.8 NMAC to ensure the protection of public safety and the environment while the operation is under temporary cessation; (2) that no temporary cessation of mining and reclamation operations shall extend beyond the current permit term, unless the Director approves an extension of the temporary cessation during the permit renewal

process conducted in accordance with 19.8.13 NMAC; (3) that to continue under a temporary cessation beyond an existing permit term, the permittee must demonstrate that the mining operation has a reasonable expectation of continuing operations; and (4) that a temporary cessation may not be used to justify a lengthy delay to final reclamation or to preserve facilities beyond what may be considered appropriate for their use in association with an existing permit.

### III. Public Comment Procedures

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

#### Written Comments

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

#### Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. NM-043-FOR," and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Albuquerque Field Office at (505) 248-5091.

#### Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from

individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t., on January 5, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

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

#### Public Meeting

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

### IV. Procedural Determinations

#### Executive Order 12630—Takings

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

#### Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

#### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and

has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

#### Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

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

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

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

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1)

considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the

subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 21, 2003.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

[FR Doc. 03-31343 Filed 12-18-03; 8:45 am]

**BILLING CODE 4310-05-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 63**

**[CARB-106-DELb; FRL-7600-6]**

### **Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of California**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to delegate to several California air pollution control agencies the authority to implement and enforce national emission standards for hazardous air pollutants as they apply to non-major sources.

**DATES:** Any comments on this proposal must arrive by January 20, 2004.

**ADDRESSES:** Send comments to Andrew Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>. Copies of the requests for delegation and other supporting documentation are available for public inspection (docket number A-96-25) at the Region IX office during normal business hours by appointment.

Copies are also available at: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, Ariel Rios Bldg, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, EPA Region IX, (415) 947-4124, [wang.mae@epa.gov](mailto:wang.mae@epa.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 112(l) of the 1990 Clean Air Act, EPA is proposing to delegate national emission standards for hazardous air pollutants as they apply to non-major sources to the following local air pollution control agencies in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District. In the Rules and Regulations section of this **Federal Register**, we are approving these delegations in a direct final action without prior proposal because we believe these delegations are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 2, 2003.

**Matt Haber,**

*Acting Director, Air Division, Region IX.*

[FR Doc. 03-31349 Filed 12-18-03; 8:45 am]

**BILLING CODE 6560-50-P**