

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.

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.

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