



nonsubstantive in nature, the Director finds that these proposed New Mexico rules are no less effective than the Federal regulations at Title 30 (Mineral Resources), Chapter VII (Office of Surface Mining Reclamation and Enforcement, Department of the Interior), Parts 700 through 887. The Director approves the proposed recodification of New Mexico's rules.

#### IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

##### 1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

##### 2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the New Mexico program (administrative record No. NM-797).

The U.S. Army Corps of Engineers responded on March 10, 1998, that the amendment is satisfactory (administrative record No. NM-800).

The Natural Resources Conservation Service responded on March 11, 1998, that it had no comments (administrative record No. 799).

##### 3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated 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 its amendment pertain to air or water quality standards. Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. NM-797). It did not respond to OSM's request.

##### 4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. NM-797).

Neither SHPO nor ACHP responded to OSM's request.

#### V. Director's Decision

Based on the above finding, the Director approves New Mexico's proposed amendment as submitted on January 6, 1998.

The Federal regulations at 30 CFR Part 931, codifying decisions concerning the New Mexico program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### VI. Procedural Determinations

##### 1. Executive Order 12866

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

##### 2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 since each such 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.

##### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since 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)).

##### 4. 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.*).

##### 5. Regulatory Flexibility Act

The Department of the Interior has determined 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 that 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

##### 6. Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

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

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 1998.

**Peter A. Rutledge,**

*Acting Regional Director, Western Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations 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
January 6, 1998	June 8, 1998	19 NMAC 8.2, Subparts 1 through 34 (recodification).

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 943**

[SPATS No. TX-035-FOR]

**Texas Regulatory Program**

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Texas regulatory program (hereinafter referred to as the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Texas' regulations pertaining to definitions, prime farmland, small operator assistance, release of performance bond, and backfilling and grading. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** June 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Texas Program

- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Texas Program**

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980 **Federal Register** (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

**II. Submission of the Proposed Amendment**

By letter dated December 1, 1997 (Administrative Record No. TX-644), Texas submitted an amendment to its program pursuant to SMCRA. Texas submitted the amendment in response to a June 17, 1997, letter (Administrative Record No. 640) and OSM sent to Texas in accordance with 30 CFR 732.17(c). Texas amended its regulations at Chapter 12 of the Texas Administrative Code (TAC) pertaining to definitions, prime farmland, small operator assistance, release of performance bond, and backfilling and grading.

OSM announced receipt of the proposed amendment in the December 29, 1997, **Federal Register** (62 FR 67598) and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on January 28, 1998.

Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to release of performance bond and backfilling and grading. OSM notified Texas of the concerns by letter dated February 12, 1998 (Administrative Record No. TX-644.06). Texas responded in a letter dated March 6, 1998 (Administrative Record No. TX-644.07, by submitting revisions to its amendment. Based upon the revisions to the proposed program amendment submitted by Texas, OSM reopened the public comment period in the April 29, 1998, **Federal Register** (63 FR 23407). The public comment period closed on May 14, 1998.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*A. Revisions to Texas' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations*

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are nonsubstantive.

Topic	State regulation	Federal counterpart regulation
Definition of Previously Mined Area	16 TAC 12.3	30 CFR 701.5
Definition of Qualified Laboratory	16 TAC 12.3	30 CFR 701.5
Definition of Thick Overburden	16 TAC 12.3	30 CFR 816.105(a)
Definition of Thin Overburden	16 TAC 12.3	30 CFR 816.104(a)
Prime Farmland	16 TAC 12.201(d)(5)	30 CFR 785.17(e)(5)
Terms and Conditions of the Bond	16 TAC 12.309(1)	30 CFR 800.21(f)
Release of Performance Bond—Application	16 TAC 12.312 (a)(1), (a)(2), (a)(3).	30 CFR 800.40 (a)(1), (a)(2), (a)(3)
Release of Performance Bond—Inspection	16 TAC 12.312 (b)(1), (b)(2).	30 CFR 800.40 (b)(1), (b)(2)
Release of Performance Bond—Criteria and Schedule	16 TAC 12.313 (a), (a)(1), (a)(2), (a)(3), (b), (d), (f).	30 CFR 800.40 (c), (c)(1), (c)(2), (c)(3), (d), (f), (g)
Backfilling and Grading: Thin Overburden	16 TAC 12.387	30 CFR 816.104(b)