



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND-052-FOR; Docket ID OSM-2012-0021; S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13XS501520]

North Dakota Regulatory Program

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

**ACTION:** Proposed rule; reopening of public comment period and opportunity for public hearing.

**SUMMARY:** We are announcing receipt of North Dakota's response to the Office of Surface Mining Reclamation and Enforcement's (OSM) March 13, 2013, issue letter pertaining to a previously proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and

Reclamation Act of 1977 ("SMCRA" or "the Act"). North Dakota intends to revise its program to be consistent with the corresponding Federal regulations, add a new subsection to an existing rule with general requirements on the format of electronic applications, and make a minor correction to a provision pertaining to a separate rule which was amended to no longer require renewal of a permit once lands in that permit are no longer being mined or used in the support of mining. This document gives the times and locations that the North Dakota 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:** The comment period for the proposed rule published January 29, 2013 (78 FR 6062), is reopened. We will accept written comments on this amendment until 4 p.m., m.d.t. [Insert date 15 days after date of publication in the Federal Register].

If requested, we will hold a public hearing on the amendment on [Insert date 15 days after date of publication in the Federal Register]. We will accept requests to speak until 4 p.m., m.d.t. on [Insert date 15 days after date of publication in the Federal Register].

**ADDRESSES:** You may submit comments by either of the following two methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). This proposed rule has been assigned Docket ID: OSM-2012-0021. If you would like to submit comments through the Federal eRulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and follow the instructions.
- Mail/Hand Delivery/Courier:  
Jeffrey Fleischman, Director  
Casper Field Office  
Office of Surface Mining Reclamation and Enforcement  
Dick Cheney Federal Building, POB 11018, 150 East B Street  
Casper, Wyoming 82601-1018

For detailed instructions on submitting comments and additional information on the rulemaking process, see the "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at [www.regulations.gov](http://www.regulations.gov), you may review copies of the North Dakota program, this amendment, a listing of any 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 also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director

Casper Field Office

Office of Surface Mining Reclamation and Enforcement

Dick Cheney Federal Building, PO Box 11018, 150 East B Street

Casper, Wyoming 82601-1018

(307) 261-6555

[jfleischman@osmre.gov](mailto:jfleischman@osmre.gov)

James Deutsch, Director

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(701) 328-2251

[jdeutsch@nd.gov](mailto:jdeutsch@nd.gov)

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Telephone:

(307) 261-6555. Internet: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background on the North Dakota Program

- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

**I. Background on the North Dakota 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 North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980 Federal Register (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, 934.16, and 934.30.

## II. Description of the Proposed Amendment

By letter dated November 14, 2012, North Dakota sent us a proposed amendment to its program (Administrative Record Document ID No. OSM-2012-0021-0002) under SMCRA (30 U.S.C. 1201 et seq.). North Dakota sent the amendment in response to a October 2, 2009 letter (Document ID No.OSM-2012-0021-0004) that we sent to North Dakota in accordance with 30 CFR 732.17(c), and 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**.

Specifically, North Dakota proposes to add and change a number of rules in the North Dakota Administrative Code (NDAC) Section 69-5.2. The changes regard the use of OSM's Applicant Violator System (AVS) prior to the approval of permits, renewals, and certain revisions. The proposed rule also contains procedures for coal operators to use if they want to submit challenges to information in the AVS. These changes are being proposed to bring North Dakota's coal program into compliance with the counterpart Federal rules regarding the AVS and ownership and control. Additionally, North Dakota is submitting a proposed rule change that adds specificity to the format requirements of electronic applications and a change which updates a provision to

no longer require the renewal of a permit once surface mining is completed and only reclamation work remains.

We announced receipt of the proposed amendment in the January 29, 2013 Federal Register (78 FR 6062; Administrative Record No. OSM-2012-0021-0001), provided an opportunity for a public hearing or meeting, and invited public comment on the proposed amendment. Because no one requested a public hearing or meeting, none was held. The public comment period ended on February 28, 2013. We received a letter from the Bureau of Land Management stating that they had no comment. We did not receive any comments from the general public.

During our review of the amendment, we identified an area of concern regarding the fact that North Dakota failed to provide a counterpart rule to 30 CFR 774.12(c)(1). We notified North Dakota of our concerns on March 13, 2013 (Administrative Record No. OSM-2012-0021-0007 and OSM-2012-0021-0008). North Dakota responded in a letter dated May 10, 2013 by revising their proposed amendment language (Administrative Record No. OSM-2012-0021-0009). Specifically, North Dakota corrected a drafting error which occurred from the use of a previous version of the 30 CFR rules by modifying NDAC Section 69-05.2-10-09. The proposed modification provides State counterpart language to 30 CFR

778.11(d), which is referenced in 30 CFR 774.12(c)(1).

### 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 North Dakota program.

#### Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for

this rulemaking and considered.

Public Availability of Comments:

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment - including your personal identifying information - may be made publicly available at anytime. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

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.d.t. on [Insert date 15 days after date of publication in the Federal Register]. If you are disabled and need reasonable 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 12866 - Regulatory Planning and Review

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

## Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

## List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

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Allen D. Klein

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Dated: May 16, 2013.

Director, Western Region

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