



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

**[SATS No. ND-056-FOR; Docket No. OSM-2022-0010;
S1D1S SS08011000 SX064A000 256S180110;
S2D2S SS08011000 SX064A000 25XS501520]**

North Dakota Regulatory Program

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

ACTION: Final rule; Approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the North Dakota regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposed amendments to its program based on changes to the North Dakota Century Code made by the State legislature that resulted in changes to the North Dakota Administrative Code for surface coal mining and reclamation operations. The changes added a perfected lien or security interest in real property to the definition of collateral bond. The changes also added conditions that must be met for real property pledged as collateral bond.

DATES: The effective date is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

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SUPPLEMENTARY INFORMATION:

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- II. Submission of the Amendment
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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 approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior (Secretary) 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 the North Dakota program and program amendments at 30 CFR 934.15 and 934.30.

II. Submission of the Amendment

By letter dated December 9, 2022 (Administrative Record No. ND-056-01), North Dakota sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). North Dakota sent the amendment at its own initiative to include changes made to both the North Dakota Century Code (NDCC) and the North Dakota Administrative Code (NDAC). Changes to the NDCC were made by the 67th legislative assembly in response to senate bill no. 2317, which was introduced by the Department of Trust Lands. The

new law created chapter 15-72 of the NDCC and established a coal mine reclamation trust. The reclamation trust uses private assets pledged as collateral to fulfill performance bond obligations. The resulting rule changes to the NDAC added a perfected lien or security interest in real property to the definition of collateral bond to NDAC 69-05.2-01-02. The changes also added conditions required for real property to be pledged as collateral bond to NDAC 69-05.2-12-04.

We announced receipt of the proposed amendment in the May 19, 2023, *Federal Register* (88 FR 32165). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because none was requested. One comment was received on the amendment. The public comment period ended on June 19, 2023.

III. OSM's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

This amendment adds a perfected lien or security interest in real property to the definition of collateral bond in NDAC 60-05.2-01-02. It also adds the conditions that must be met for real property pledged as collateral bond to NDAC 69-05.2-12-04.

A. NDAC 60-05.2-01-02

“Collateral bond” in NDAC 69-05.2-01-02(13) is defined as “an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificate of deposit of any bank authorized to do business in North Dakota or an irrevocable standby letter of credit issued by a federally insured or equivalently protected bank authorized to do business in

the United States, payable only to the commission upon presentation, or perfected, first-lien security interest in real property in favor of the commission.”

This amendment adds “or perfected, first-lien security interest in real property in favor of the commission” to the definition of collateral bond found in NDAC 69-05.2-01-02. The Federal regulations include similar language under 30 CFR 800.5(b)(5), which permits a perfected first-lien security interest in real property in favor of the regulatory authority to be used as a supporting factor for an indemnity agreement executed by the permittee as principal. This proposed change, thus, updates State rules to better match its Federal counterpart. Thus, North Dakota’s proposed changes to NDAC 69-05.2-01-02 are consistent with and no less effective than the Federal program.

B. NDAC 69-05.2-12-04 (3) (a) – (c)

At NDAC 69-05.2-12-04 (3) (a) – (c), North Dakota proposes to add three conditions that must be met for real property to be pledged as collateral bond. Those conditions include the following: the first condition at NDAC 69-05.2-12-04 (3) (a) provides that “[t]he applicant shall grant the commission first mortgage, first deed of trust or perfected first-lien security interest in real property with the right to sell or otherwise dispose of the property in the event of foreclosure.” The second condition states that “the applicant shall submit a schedule of the real property to be mortgaged or pledged to secure the obligations under the indemnity agreement, with a list to include: a description of the property, the fair market value of the property, as determined by an independent appraisal conducted by a certified appraiser, and proof of possession and title to the real property.” NDAC 69-05.2-12-04 (3) (b). The third condition provides that “[t]he real property to be pledged as collateral may include land which is part of a permit area: however, land pledged as collateral for a bond under this section may not be disturbed under any permit while the land is serving as security under this section.” NDAC 69-05.2-12-04 (3) (c).

The conditions added to NDAC 69-05.2-12-04 (3) (a) (c) mirror the conditions required for real property to be posted as collateral bond described in Federal regulations at 30 CFR 800.21(c).

The changes proposed by this amendment update North Dakota's rules to better match the Federal counterpart regulations. The proposed changes are thus consistent with and no less effective than the Federal regulations.

C. Conclusion

We are approving North Dakota's proposed changes to its coal regulatory program. As discussed above, North Dakota's proposed changes are nearly identical to the Federal regulations, and, in the case of NDAC 69-05.2-12-04 (3)(a)-(c), the changes make the North Dakota program consistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 60-05.2-01 02 and 69-05.2-12-04 (3) (a) – (c) are consistent with SMCRA and no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received a single anonymous comment, suggesting taxpayer dollars should go towards only reclamation work, and any fees collected from fossil fuel industry should go towards environmental cleanup after natural disasters. This comment is outside the scope of this amendment, and we will not respond to it here. We appreciate the commenter's engagement with the rulemaking process.

Federal Agency Comments

On December 12, 2022, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record No. ND-056-03, and ND-056-04). We did not receive any comments from Federal agencies.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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 North Dakota proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on December 12, 2022, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. ND-056-03). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from SHPO and ACHP on amendments that may have an effect on historic properties. On December 12, 2022, we requested comments on North Dakota amendment (Administrative Record No. ND-056-03). We did not receive comments from SHPO or ACHP.

V. OSM's Decision

Based on the above findings, we are approving North Dakota's proposed amendment ND-056-FOR sent to us on December 9, 2022 (Administrative Record No. ND-056-01).

To implement this decision, we are amending the Federal regulations, at 30 CFR part 934, that codify decisions concerning the North Dakota program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule would not result in a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M-94-3), the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior (Department) has reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this *Federal Register* document meets the criteria of section 3 of Executive Order 12988. Section 3 is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this *Federal Register* document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program or to the

program amendment that North Dakota drafted.

Executive Order 13132 - Federalism

This rule has potential federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States. North Dakota, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an amendment to the North Dakota program submitted and drafted by the State and thus is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

The Department strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department’s consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department’s Tribal consultation policy is not required. The basis for this determination is that our decision is on the North Dakota State program that does not include the regulation of Indian lands or regulation of activities on Indian lands as that term is defined in 30 U.S.C. 1291(9). Indian lands are regulated independently under the applicable, approved Federal Indian lands program. 512 Departmental Manual 4 (Department of the Interior Policy on Consultation with Indian Tribes) also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a

constructive approach for consulting on these amendments. Our approval of the amendment and revisions to the original amendment is an action without Tribal implications under section 4.3B of 512 Departmental Manual 4.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rulemaking 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 a significant energy action under the definition in Executive Order 13211, a statement of energy effects is not required

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the Department of the Interior's Departmental Manual, part 516, section 13.5(A), State program amendments are not 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 include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is not required.

Regulatory Flexibility Act

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 corresponding 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 corresponding Federal regulations.

Congressional Review 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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

List of Subjects in 30 CFR part 934

Intergovernmental relations, Surface mining, Underground mining.

Marcelo Calle,
Acting Regional Director
Unified Interior Regions 5, 7 – 11

For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934 – North Dakota

1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 934.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendment.

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Original amendment submission date	Date of final publication	Citation/description
* * * * *		
December 9, 2022	<u>[Insert date of publication in the Federal Register]</u>	NDAC 60-05.2-01-02/ Updates the definition of collateral bond. NDAC 60-05.2-01-04/ Adds the conditions that must be met for real property pledged as collateral bond.

[FR Doc. 2026-02982 Filed: 2/12/2026 8:45 am; Publication Date: 2/13/2026]