

applied to ATP awards are the "Government Auditing Standards (GAS) issued by the Comptroller General of the United States (also known as yellow book standards) and the ATP program-specific audit guidelines.

The ATP program-specific audit guidelines include guidance on the number of audits required under an award. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these audits. The Department of Commerce's Office of Inspector General (OIG) reserves the right to conduct audits as deemed necessary and appropriate.

#### § 295.12 [Removed]

13. Section 295.14 is removed.

14. Section 295.22 is revised to read as follows:

#### § 295.22 Limitations on assistance.

(a) An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

(b) The total value of any in-kind contributions used to satisfy the cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

15. Section 295.25 is added as follows:

#### § 295.25 Special rule for the valuation of transfers between separately-owned joint venture members.

(a) *Applicability.* This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.

(b) *Rule.* The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs; provided, however, that in no event shall the aggregate of these allowable costs exceed 30 percent of the non-Federal share of the total cost of the joint research and development program.

(c) *Definition.* The term "best customer price" shall mean the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

16. Sections 295.31 and 295.32 are revised to read as follows:

#### § 295.31 Qualification of proposers.

Awards under this subpart will be available to all businesses subject to the limitations set out in §§ 295.3 and 295.32.

#### § 295.32 Limitations on assistance.

(a) The Program will not directly provide funding under this Subpart to any governmental entity, academic institution or independent research organization.

(b) For proposals submitted to ATP after November 1, 1997, awards to large businesses made under this Subpart shall not exceed 40 percent of the total project costs of those awards in any year of the award.

(c) Awards under this subpart may not exceed \$2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs, profits, or management fees shall be available for awards made under this Subpart.

(d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

17. In addition to the amendments set forth above, in 15 CFR part 295 remove the word "applicants" or "applicant" and add in its place the word "proposers" or "proposer" in the following places

- a. Section 295.7(a), (b) and (c);
- b. Section 295.21 section heading;
- c. Subpart C heading; and
- d. Section 295.31 section heading.

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

[OSM SPATS No. ND-035-FOR, North Dakota Amendment No. XXV]

#### North Dakota 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:** The Office of Surface Mining Reclamation and Enforcement (OSM) is

announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to a proposal to eliminate the requirement for companies to submit a copy of the federal reclamation fee report, changes to revegetation success standards, and a new rule on inspection frequencies for inactive mines. The amendment is intended to revise the North Dakota program to improve operational efficiency.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t. October 17, 1997. If requested, a public hearing on the proposed amendment will be held on October 14, 1997. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on October 2, 1997.

**ADDRESSES:** Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Federal Building, room 2128, Casper, Wyoming 82601-1918

James R. Deutsch, Director, Reclamation Division, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, Telephone: (701) 328-2252

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, (307) 261-6550; Internet address, gpadgett@osmre.gov.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General 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 can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can

be found at 30 CFR 934.15, 934.16, and 934.30.

## II. Proposed Amendment

By letter dated August 29, 1997 North Dakota submitted a proposed amendment to its program pursuant to SMCRA (Amendment number XXV), administrative record No. ND-Z-01, 30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise were: NDAC 69-05.2-13-01, concerning its Coal Production and Reclamation Fee Report; NDAC 69-05.2-22-07, concerning reclamation success standards for woodlands and shelterbelts; and the addition of NDAC 69-05.2-28, concerning inspections on inactive mine sites.

Specifically, North Dakota proposes to: (1) delete its requirement that mining companies provide the Public Service Commission with a copy of the Coal Production and Reclamation Fee Report that is submitted to OSM; (2) revise North Dakota's rules concerning revegetation standards for reclaimed woodlands and shelterbelts, which require that at least eighty percent of the trees, shrubs and half-shrubs counted for meeting standards be in place for at least six years, and deem the standard satisfied if the mine operator demonstrates that no tree, shrub or half-shrub replanting has occurred during the last six years of the responsibility period; (3) give mining companies the option of proving reclamation success for three out of five consecutive years, starting no sooner than the eighth year of the responsibility period; and (4) add a rule to reduce the number of inspections from twelve to four per year that must be conducted on inactive mine sites at mines where coal production has permanently ceased and all disturbed areas have been reclaimed and revegetated.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria on 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

### 1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time

indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

### 2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on October 2, 1997. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

### 3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

## IV. 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 of the private sector.

**List of Subjects in 30 CFR Part 934**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1997.

**Peter A. Rutledge,**

*Acting Regional Director, Western Regional Coordinating Center.*

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