

subsections must be submitted with the permit application.

(kk) By February 14, 2002, Indiana must submit either an amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise 312 IAC 25-4-118(4) or otherwise modify the Indiana regulatory program to require permittees to allow authorized representatives of the Secretary of the Interior to have right of entry to surface coal mining and reclamation operations for purposes of inspections, monitoring, and enforcement and to be accompanied by private persons under the conditions specified in 30 CFR 773.17(d)(2).

(ll) By February 14, 2002, Indiana must submit either an amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise 312 IAC 25-4-45(b)(4) or otherwise modify the Indiana regulatory program to require the demonstration of the suitability of topsoil substitutes or supplements to also be based upon analysis of the "total depth" of the different kinds of soils.

(mm) By February 14, 2002, Indiana must submit either an amendment or a description of an amendment to be proposed, together with a timetable for adoption, to:

(1) Revise 312 IAC 25-4-113(f) or otherwise modify the Indiana program to allow a person to oppose or seek disclosure of confidential information.

(2) Revise 312 IAC 25-4-113 or otherwise modify the Indiana program to add a provision, consistent with 30 CFR 773.6(d)(3)(iii), that classifies information on the nature and location of archeological resources on public land and Indian land as qualified confidential information in accordance with the Archeological Resources Protection Act of 1979.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND-042-FOR; Amendment No. XXXI]

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is

approving 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 or the Act). North Dakota proposed revisions to its statutes concerning references to the State Historical Society and the title of the persons who head that agency. North Dakota revised its program to clarify ambiguities.

EFFECTIVE DATE: November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Casper Field Office Director, Telephone: 307/261-6550; Internet address: Gpadgett@OSMRE.GOV

SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota 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 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 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 the Act * * * ; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of this 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 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, and 934.30.

II. Submission of the Proposed Amendment

By letter dated May 9, 2001, North Dakota sent us an amendment to its program (Amendment number XXXI), administrative record No. ND-FF-01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to make changes at its own initiative.

We announced receipt of the proposed amendment in the June 6, 2001 **Federal Register** (66 FR 30347). In

the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (administrative record No. ND-FF-04). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 5, 2001. We received one comment from the public and two comments from Federal agencies.

III. Director's Findings

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.

Minor Revisions to North Dakota Statutes

North Dakota proposed minor wording and editorial changes in its Senate Bill 2424 to the following previously-approved statute:

North Dakota Century Code Section 38-14.1, Surface Mining and Reclamation Operations

Section 4. Amendment. NDCC 38-14.1-10. Necessity of Permit—Exception.

Changes the name of the State Historical Board to the State Historical Society and the name of the superintendent to the director. Changes two "prior tos" to "before." Changes "Any person or operator may engage in the inventorying and evaluation of cultural resources * * * ." to "A person or operator shall * * * ." A few other minor changes were made.

Section 5. Amendment. NDCC 38-14.1-14.u. Cultural resource information including all of the following:

Changes in five places, "superintendent" to "director."

Changes in one place, "board" to "society."

Section 6. Amendment. NDCC 38-14.1-21.2. Approval or modification of the permit or permit revision application.

Changes "board" to "society." Changes "shall" to "must."

Section 7. Amendment. NDCC 38-14.1-30.1. Right to administrative review on rulings.

Changes "board" to "society." Changes "superintendent" to "director." Miscellaneous very minor editorial changes.

Section 8. Amendment. NDCC 38-14.1-37.2.d. Collection of cultural resource information.

Changes "board" to "society" and changes "superintendent" to "director."

Because all of the aforementioned changes are minor, we find that they

will not make North Dakota's statutes less stringent than SMCRA.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (administrative record No. ND–FF–03) and received one comment letter as a result: a June 15, 2001, letter from the North Dakota State University Extension Service stating that it is in agreement with the proposed amendment.

Federal Agency Comments

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–FF–03). Two comment letters from Federal agencies were received.

On May 24, 2001, the Natural Resources Conservation Service sent us a letter (administrative record No. ND–FF–05) stating that it did not have any comments.

On June 12, 2001, the U.S. Fish and Wildlife Service sent a letter (administrative record No. ND–FF–06) stating it does "not anticipate any significant impacts to fish and wildlife resources as a result of the proposed amendment."

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (administrative record No. ND–FF–03). EPA did not respond to our request.

State Historic 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 the SHPO and ACHP on amendments that may have an effect on historic properties. On May 18, 2001, we requested their comments on North Dakota's amendment (administrative record No. ND–FF–03), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment sent to us by North Dakota on May 9, 2001.

To implement this decision, we are amending the Federal regulations at 30 CFR part 934.15, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. 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. Making this rule effective immediately will expedite that process.

VI. 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).

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

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.

Executive Order 13211 Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule 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. Since this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because 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)).

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.*).

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.

Small Business Regulatory Enforcement Fairness 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 upon the fact that the state submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation was not considered a major rule.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on any local, State, or Tribal governments or private entities.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 2001.

Brent Wahlquist,
Regional Director, Western Regional Coordinating Center.

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's regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	* * * * *
May 9, 2001	November 16, 2001	NDCC 38-14.1

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-132-FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule.

SUMMARY: The Secretary of the Interior (Secretary) is approving legislation submitted by Pennsylvania as part of its regulatory program (Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania submitted the legislation to satisfy a condition of program approval found at 30 CFR 938.11(i). The condition requires the submission of enacted laws providing for the award of costs and expenses that are no less effective than 30 CFR 840.15 and in accordance with section 525(e) of SMCRA.

EFFECTIVE DATE: November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Acting Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office,

Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036, email: bbrock@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Pennsylvania's Submission
- III. Secretary's Findings
- IV. Summary and Disposition of Comments
- V. Secretary's Decision
- VI. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of SMCRA 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 the Act * * *" and "rules and regulations consistent with regulations issued by the Secretary" pursuant to the Act. 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions

concerning the Pennsylvania program and previous amendments are codified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Pennsylvania's Submission

By letter dated January 3, 2001, (Administrative Record Number PA 848.25), the Pennsylvania Department of Environmental Protection (PADEP) submitted legislation consisting of excerpts of House Bill 393 regarding attorney costs and expenses associated with administrative legal proceedings relating to coal mining for Secretarial approval. House Bill 393 amends Title 27 of the Pennsylvania Consolidated Statutes by adding section 7708 titled, "Costs for Mining Proceedings."

The full text of Pennsylvania's submission was published in the February 15, 2001, **Federal Register** (66 FR 10405). The public comment period closed on March 19, 2001. OSM received two comments. No one requested an opportunity to speak at a public hearing, so no hearing was held.

III. Secretary's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Secretary's findings concerning the legislation submitted by Pennsylvania.

Section 1 of House Bill 393 amends Title 27 of the Pennsylvania Consolidated Statutes by adding Chapter 77, "Costs and Fees," section 7708. Section 7708 (a) states that