

Section 1.280F-6 also issued under 26 U.S.C. 280F. \* \* \*

2. Section 1.280F-6 is amended as follows:

**§ 1.280F-6 Special rules and definitions.**

[The text of this proposed section is the same as the text of the amendments to § 1.280F-6T published elsewhere in this issue of the **Federal Register**.]

**Robert E. Wenzel,**

*Deputy Commissioner for Services and Enforcement.*

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 934**

[ND-047-FOR, Amendment No. XXXIV]

**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:** We are 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 or the Act). North Dakota proposes revisions to its rules about bonding, blasting, and revegetation success standards. North Dakota intends to revise its program to clarify ambiguities, and improve operational efficiency.

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:** We will accept written comments on this amendment until 4 p.m., m.d.t. August 6, 2003. If requested, we will hold a public hearing on the amendment on August 1, 2003. We will accept requests to speak until 4 p.m., m.d.t. on July 22, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the North Dakota program, this amendment, a

listing of any scheduled 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 receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (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, 307-261-6550, [GPadgett@osmre.gov](mailto:GPadgett@osmre.gov).

James R. Deutsch, Director, Reclamation Division, Public Service Division, 600 East Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505-0480, 701-328-2400, [jrd@psc.state.nd.us](mailto:jrd@psc.state.nd.us).

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: 307-261-6550. Internet: [GPadgett@osmre.gov](mailto:GPadgett@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 the 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 934.12, 934.13, 934.15, and 934.30.

**II. Description of the Proposed Amendment**

By letter dated April 23, 2003, North Dakota sent us a proposed amendment to its program (Amendment number ND-XXXIV), administrative record No.

ND-II-01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include 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**.

The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposes to revise are: (1) NDAC 69-05.2-01-02, Definitions; (2) NDAC 69-05.2-12-01, Performance bond—General requirements; (3) NDAC 69-05.2-12-04, Performance bond—Collateral bond; (4) NDAC 69-05.2-17-07, Performance standards—Use of Explosives—Records of Blasting operations; and (5) NDAC 69-05.2-22-07, Performance standards—Revegetation—Standards for success.

Specifically, NDAC 69-05.2-01-02 (Definitions) is being revised to add irrevocable letters of credit as one of the financial supports for a collateral bond; NDAC 69-05.2-12-01 (Performance bond—General requirements) is being revised to allow the posting of more than one bond to guarantee specific phases of reclamation within the permit area; NDAC 69-05.2-12-04 (Performance bond—Collateral bond) is being revised to specify that: (1) The permittee obtain prior North Dakota Public Service (Commission) approval of the bank that will issue the letter of credit, (2) the term of the letter must be at least one year, (3) the bank issuing the credit must give the Commission at least 90 days notice if it intends to terminate the credit at the end of the current term, (4) the Commission will not accept letters of credit in excess of 10 percent of the bank's total equity, and (5) the bank must provide the Commission with notice of any pending action that could result in suspension or revocation of the bank's charter or license to do business; NDAC 69-05.2-17-07 is being revised to make a minor editorial change to clarify that other structures (as well as dwellings, schools, churches, and commercial and institutional buildings) may be protected from certain blasting operations; and NDAC-69-05-22-07, minor editorial changes to North Dakota's revegetation success standards that clarify that the standards can be exceeded, as well as met, for demonstrating reclamation success.

**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.

*Written Comments*

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

*Electronic Comments*

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. ND-047-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 303/261-6555.

*Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

*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 July 22, 2003. If you are disabled and need special 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 12630—Takings*

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

*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.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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 because each 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 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. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

*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. Because 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 certifies 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, which 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. 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*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. 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 did not impose an unfunded mandate.

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

Intergovernmental relations, Surface Mining, Underground Mining.

Dated: June 9, 2003.

**Allen D. Klein,**

*Regional Director, Western Regional Coordinating Center.*

[FR Doc. 03-17084 Filed 7-3-03; 8:45 am]

**BILLING CODE 4310-05-P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 946**

[VA-120-FOR]

**Virginia Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Virginia regulatory program (Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment is intended to increase the permit and anniversary fees for Coal Surface Mining and Reclamation permits issued by the Virginia Department of Mines, Minerals and Energy (DMME).

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on August 6, 2003. If requested, we will hold a public hearing on the amendment on August 1, 2003. We will accept requests to speak at the hearing until 4 p.m. (local time), on July 22, 2003.

**ADDRESSES:** You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the address listed below.

You may review copies of the Virginia program, this amendment, a listing of any scheduled 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 receive one free copy of the amendment by contacting OSM's Big Stone Gap Field Office.

Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219; Telephone: (540) 523-

4303. E-mail: [rpenn@osmre.gov](mailto:rpenn@osmre.gov). Mr. Leslie S. Vincent, Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219; Telephone: (540) 523-8100. E-mail: [lsv@mme.state.va.us](mailto:lsv@mme.state.va.us).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523-4303. Internet: [rpenn@osmre.gov](mailto:rpenn@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background on the Virginia Program  
II. Description of the Proposed Amendment  
III. Public Comment Procedures  
IV. Procedural Determinations

**I. Background on the Virginia 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 these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

**II. Discussion of the Proposed Amendment**

By letter dated May 16, 2003 (Administrative Record Number VA-1029), the DMME submitted an amendment to the Virginia program. In its letter, the DMME stated that the 2003 Virginia General Assembly enacted legislation (House Bill 2465/ Senate Bill 1173 approved March 18, 2003) to increase the permit and anniversary fees for Coal Surface Mining and Reclamation permits issued by DMME.

The proposed amendment revises the Code of Virginia at section 45.1-235.E and the Virginia Coal Surface Mining and Reclamation Regulations at 4VAC25-130-777.17 concerning permit fees. Specifically, Virginia is increasing the permit application fee for a surface coal mining and reclamation permit from \$12.00 to \$26.00 per acre or any