

**B. This Final Rule**

As noted above, HUD received no public comments in response to the September 16, 2014, interim rule, and is adopting the interim rule without change.

*Findings and Certifications*

Executive Order 13563, Regulatory Review

The President's Executive Order (EO) 13563, entitled "Improving Regulation and Regulatory Review," was signed by the President on January 18, 2011, and published on January 21, 2011, at 76 FR 3821. This EO requires executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Section 4 of the EO, entitled "Flexible Approaches," provides, in relevant part, that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. HUD submits that the changes made by this rule to the Section 232 regulations are consistent with the EO's directions as the rule reduces the burden on regulated parties by allowing for less restrictive reporting periods.

## Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The changes required by this rule do not impose significant economic impacts on these small entities or otherwise adversely disproportionately burden such small entities. In fact, such small entities should benefit from the less restrictive reporting period. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

## Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or

construction materials, manufactured housing, or occupancy. This rule is limited to changing submission deadlines for required reports. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

## Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

## Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

## Information Collection Requirements

The information collection requirements contained in this rule were reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0605. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

## Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the Mortgage Insurance Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities mortgage insurance programs is 14.129.

**List of Subjects***24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 232*

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

**PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS****PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES**

■ Accordingly, the interim rule amending parts 5 and 232 of title 24 of the Code of Federal Regulations, which was published at 79 FR 55360 on September 16, 2014, is adopted as final without change.

Date: December 5, 2014.

**Biniam Gebre,**

*Acting Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2014–29464 Filed 12–15–14; 8:45 am]

**BILLING CODE 4210–67–P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 934**

[SATS No. ND–052–FOR; Docket ID No. OSM–2012–0021; S1D1SS08011000 SX066A00067F144S180110; S2D2SS080 11000SX066A00033F14XS501520]

**North Dakota Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.  
**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the North Dakota regulatory program (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. North Dakota submitted the amendment to address required rule changes OSMRE identified by letter to North Dakota dated October 2, 2009, under 30 CFR 732.17(c). These include changes to North Dakota’s rules regarding use of the Applicant Violator System (AVS) and ownership and control. North Dakota has met all of the conditions outlined in the 732 letter and has included all applicable revisions and/or additions to their rules. North Dakota is also proposing to add a new subsection to an existing rule with general requirements relating to the format of electronic applications. They are also making a minor correction to another rule pertaining to the term of permits to make it consistent with a separate rule which was previously 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 surface coal mining.

**DATES:** Effective December 16, 2014.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Chief, Denver Field Division, Telephone: 307-261-6550, Internet address: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the North Dakota Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement’s (OSMRE’s) Findings
- IV. Summary and Disposition of Comments
- V. OSMRE’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 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 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. Submission 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 an 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.

Specifically, North Dakota proposes to add and/or change nine rules in the North Dakota Administrative Code (NDAC) Section 69-5.2. The rule changes primarily address the use of OSMRE’s Applicant Violator System (AVS) prior to the approval of permits, permit renewals, and certain permit revisions. The proposed rule also contains procedures for surface coal mining operators to use if they want to submit challenges to information in the AVS. North Dakota proposed these changes to make its program consistent with the counterpart Federal regulations regarding the AVS and ownership and control. Additionally, North Dakota is submitting a proposed rule change that adds specificity to the format requirements for electronic applications and a change that updates a provision to no longer require the renewal of a permit once surface coal 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). 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 Document ID No. OSM-2012-0021-0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 1, 2013. We received a letter from one Federal agency stating that they had no comments.

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 Document ID No. OSM-2012-0021-0008). North

Dakota responded in a letter dated May 10, 2013 by revising their proposed amendment language (Administrative Record Document ID 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. OSMRE’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.

*A. Revisions to North Dakota’s Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

North Dakota’s proposed revisions to the following rules contain language that is the same as or similar to the corresponding sections of the Federal regulations, which we find to be consistent with and no less effective than the Federal regulations.

NDAC 69-05.2-05-08 Permit Applications—Permit Term

North Dakota added language to its rules to clarify that surface coal mining permits are to be renewed only when surface coal mining operations are taking place. Prior to this amendment, this particular section of North Dakota’s regulations required permit renewal through the completion of surface coal mining and reclamation operations. NDAC 69-05.2-11-03, which contains the rules specific to permit renewals, already allowed permit renewals to lapse once surface mining operations are complete and only reclamation remains, but it was contradictory with NDAC 69-05.2-05-08. NDAC 69-05.2-05-08 is being revised to remove this contradiction in North Dakota’s rules by deleting “and reclamation”.

We also note that the revised rule has an apparent inconsistency because it states that permits shall be successively renewed under section 69-05.2-11-03 “until final bond release.” A final bond, however, is not released until after reclamation is complete. Thus, North Dakota’s failure to delete the latter part of the rule “until final bond release” may create ambiguous interpretations. By letter dated November 14, 2012, North Dakota explained that the change was being proposed to no longer require renewal of a permit once lands in that permit are no longer being mined or

used in support of mining. Thus, whether this provision is interpreted as intended to require renewal only while surface coal mining operations occur or whether it is interpreted to require renewal through the release of the bond, we find that it is no less effective than the counterpart Federal Regulation found at 30 CFR 773.4(a). OSMRE understands that the intention of the rule is that permit renewal will only be required while surface coal mining operations are occurring and will expect the provision to be enforced accordingly.

30 CFR 773.4(a) specifically allows permit renewals to lapse once surface coal mining operations are completed and only reclamation operations remain. The Federal regulation also states that the obligations established under a coal mining permit do not lapse once surface mining activities cease and a permit need no longer be renewed. Thus, we find this section of the amendment to be no less effective than the Federal regulations. We, therefore, are approving it.

#### NDAC 69–05.2–06–01 Permit Applications—Identification of Interests and NDAC 69–05.2–06–02 Permit Applications—Compliance Information

North Dakota proposed to add subsection 2 of NDAC 69–05.2–06–01, which addresses business entity information, and subsection 6 of NDAC 69–05.2–06–02, which addresses violation information, to make their rules consistent with 30 CFR 778.9. The proposed amendments to each subsection are similar to each other. This duplication of rules is necessary due to the structure of the North Dakota Administrative code, which is divided into a section for permit/mining history information requirements and a section for requirements regarding identification of interests in the area surrounding a proposed surface coal mine permit.

These two subsections of the rules state that an applicant must certify that information recorded in the AVS system is accurate, complete and up to date and states that necessary information must be submitted and affirmed by the applicant if it is not accurate, complete and up to date. There are also regulations included in the two subsections that state that a central file containing an applicant's business entity identity information will be created in AVS by the Commission and provides that the file will be open to the public. The rules also require the applicant to file a copy of the information with the county auditor

where the surface coal mining is proposed.

Based on the discussion above and because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, at 30 CFR 778.9, we find that they are consistent with and no less effective than the corresponding Federal regulations. We, therefore, are approving them.

#### NDAC 69–05.2–10–01 Permit Applications—Public Notices of Filing and Entering Data Into the Applicant Violation System

North Dakota proposed an addition to NDAC Section 69–05.2–10–01 which defines what the AVS system is and requires that information from a permit application deemed complete be entered into the database, and that new information from the permit review process be updated in the database as it is submitted to the Commission. This portion of the amendment is substantially the same as the counterpart Federal regulations and Federal definition of AVS found at 30 CFR 773.4.

North Dakota's proposed language at NDAC 69–05.2–10–01(7) states that business entity information must be entered into AVS according to requirements in NDAC 69–05.2–06–01. This language is consistent with OSMRE's rules which state that information from 30 CFR 778.11 (Providing applicant and operator information) must be submitted along with information pertaining to 778.12(c).

The proposed language also states that information pertaining to unabated or uncorrected violations must be entered into the database according to NDAC 69–05.2–06–02, which is consistent with the Federal reference to 30 CFR 773.8(b)(2). North Dakota's proposed language stipulates that information entered into AVS according to NDAC 69–05.2–10–01(7)(a) must be updated throughout the permit review process as new information becomes available. This language is consistent with the Federal Regulation that outlines the same requirement in 30 CFR 773.8.

North Dakota proposes to add NDAC 69–05.2–10–01(8), which is consistent with 30 CFR 773.9. This part states that prior to a permit eligibility determination, information in AVS and from other sources will be reviewed to make ownership and control findings. The language contained in this part indicates that review of this information is necessary to make a permit eligibility determination based on subsections 1 through 5 of NDAC 69–05.2–10–03. This

proposed addition is substantially the same as the relevant portions of the counterpart Federal regulations at 30 CFR 773.8 and 773.9.

North Dakota also proposed additional language to NDAC 69–05.2–10–01(9). These regulations in the North Dakota program, which are the counterparts to 30 CFR 773.10, state that permit eligibility will be dependent upon review of an applicant's and operator's permit history and mining experience. The North Dakota Rules state that the Commission rather than the regulatory authority (as stated in the Federal counterpart) will rely on information that the applicant submits, because the Commission is the regulatory authority within the state of North Dakota with jurisdiction over permit applications. North Dakota references NDAC Section 69–05.2–06–01 which details the required information to be submitted into the AVS whereas the Federal Regulation references 30 CFR 778.12. NDAC 69–05.2–06–01 is consistent with 30 CFR 778.12 and is therefore the appropriate counterpart reference. This proposed addition is substantially the same as the counterpart Federal Regulation.

North Dakota proposes to revise NDAC 69–05.2–10–01(10) which is the counterpart to 30 CFR 773.11. The Federal counterpart regulation states that this requirement pertains to compliance with SMCRA, "the State regulatory program" and "other applicable air or water quality laws." This amendment states that the Commission will review an applicant's and operator's history, relying on information both in AVS and submitted by the applicant, to determine whether any laws or rule of North Dakota, SMCRA, or "any law or rule in any state enacted under federal law or regulation pertaining to air, water or environmental protection have been violated in connection with any surface coal mining and reclamation operation." We find that North Dakota's broad interpretation of "other applicable air or water quality laws" is consistent with and no less effective than the Federal Regulation.

North Dakota references NDAC 69–05.2–06–02 for the information the applicant submits whereas the Federal Regulation references 30 CFR 778.14. Subsections 1 through 5 of NDAC 69–05.2–10–03 are referenced in place of 30 CFR 773.12. All references to the NDAC are consistent with the referenced Federal regulations and are therefore the appropriate counterpart references. This proposed addition, as with the other provisions, is consistent with and no less effective than the counterpart

Federal regulations. We, therefore, are approving this portion of the amendment.

**NDAC 69–05.2–10–03 Permit Applications—Criteria for Permit Approval or Denial**

North Dakota proposed to add language to subsection 5 of NDAC 69–05.2–10–03 in order to make it consistent with the Federal counterpart rule at 30 CFR 773.12. This part states that the Commission will request a compliance history report from AVS to determine permit eligibility based on unabated or uncorrected violations, and that if the permit is denied the applicant will receive a written explanation and notification of appeal rights under North Dakota's appellate process. In this section of its rules, North Dakota provides reference to both subsection 2 of NDAC 69–05.2–06–01 and to subsection 6 of NDAC 69–05.2–06–02 regarding new information which is required to be submitted, both of which are the counterparts to Federal regulations at 30 CFR 778.9(d). This revised provision is consistent with and no less effective than Federal Regulation 30 CFR 773.12. Therefore, we are approving this portion of the amendment.

**NDAC 69–05.2–10–07 Permit Applications—Challenges to Ownership or Control Listings and Findings**

North Dakota proposed to add NDAC 69–05.2–10–07 to make its rules consistent with 30 CFR 773.25, 773.26, 773.27, and 773.28. This section of the North Dakota rules addresses who may challenge ownership and control listings and findings, what evidence must be submitted under such a challenge, how the Commission makes a decision about ownership and control listings and findings, how to submit appeals regarding ownership and control findings, and how the AVS system is used to facilitate deliberation of ownership and control.

With one exception, the language contained in this amendment is substantially the same as the counterpart Federal regulations. North Dakota did not include certain counterpart language included in 30 CFR 773.27(b) in its proposed rule. 30 CFR 773.27(b) states that the materials presented in connection with a challenge to ownership and control listings and findings will become part of a permit file, an investigation file, or another publically available file. However, this amendment does not explicitly provide that the information submitted under this subpart will become publicly available. In lieu of

explicitly stating this requirement, North Dakota elected to refer to its open records statute at North Dakota Century Code (NDCC) 44–04–18 which states “except as otherwise specifically provided by law, all records of a public entity are public records.” There is no specific exception in this section of NDCC which would apply to challenges to AVS findings. Additionally, North Dakota has specifically stated that the information submitted in connection with a challenge to AVS findings in the state will be publically available upon approval of this amendment unless a request is made to hold certain information as confidential. Thus, we find this provision to be consistent with the Federal Regulation.

The Federal Regulation at 30 CFR 773.27(b) states that the regulatory authority upon request will hold as confidential any information submitted in an ownership and control challenge which is not required to be made available to the public under 30 CFR 840.14, which references 772.15(b) and 773.6(d). 30 CFR 772.15 states that the regulatory authority shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration. Under 30 CFR 773.6(d), certain chemical analyses of coal, archaeological resources, and information submitted under Section 508 of SMCRA are also listed as potential confidential information. Similarly, North Dakota has provisions under subsection 3 of North Dakota Century Code Section 38–14.1–13 to hold confidential information which pertains only to the analysis of the chemical and physical properties of the coal. NDAC 69–05.2–10–07(7) states that a request to hold materials submitted under this section as a trade secret may be made to the commission following the procedures of North Dakota Administrative Code chapter 69–02–09. Thus, we find that North Dakota's rule at NDAC 69–05.2–10–07 is consistent with and no less effective than Federal regulations at 30 CFR 773.25, 773.26, 773.27, and 773.28. Therefore, we are approving this portion of the amendment.

**NDAC 69–05.2–10–08 Permit Applications—Commission Actions Related to Ownership and Control Information After Permit Issuance**

North Dakota proposed to add NDAC Section 69–05.2–10–08 to its rules to

make them consistent with 30 CFR 774.11. This Rule addresses permit eligibility determinations. It states how information must be entered into AVS and that AVS will be used to discover any unabated violations permittees and owners/controllers have with other mines that they own or control. It also includes information about how permanent permit ineligibility findings can be made by the Commission, what these findings are based on, and the due process under which such findings are made. This proposed addition to North Dakota's Rules is consistent with and no less effective than the counterpart Federal Regulation at 30 CFR 774.11. We, therefore, are approving it.

**NDAC 69–05.2–10–09 Permit Applications—Ownership and Control Requirements for Permittees After Permit Issuance**

North Dakota proposed to add NDAC Section 69–05.2–10–09 to make its rules consistent with 30 CFR 774.12 and 778.11(d) to include all applicable provisions in the Federal counterpart rules. This new section states that a permittee must update pertinent information required by NDAC 69–05.2–06–01 after either receiving a cessation order or if there is a change to any position of any person who has ownership or control of the applicant identified in subdivision e of subsection 1 of NDAC 69–05.2–06–01, whose Federal counterpart rule is 30 CFR 778.11.

The North Dakota rule language at NDAC 69–05.2–10–09 provides State counterpart language to 30 CFR 778.11(d), which is referenced in 30 CFR 774.12(c)(1). In subsection 3, North Dakota listed the requirements in their proposed language regarding information which must be provided after a change in ownership or control of the applicant. The list of requirements proposed by North Dakota in subsection 3 is identical to those referred to in the counterpart Federal regulations, located at 30 CFR 778.11(d). The proposed North Dakota rules are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 774.12 and 778.11(d). Thus, we are approving it.

*B. Revisions to North Dakota's Rules With No Corresponding Federal Regulations*

**NDAC 69–05.2–05–02 Permit Applications—General Requirements for Format and Contents**

North Dakota proposed to add stipulations to its rules which outline requirements for electronic permit

submittals. Additionally, North Dakota is adding a requirement that permit submissions made electronically use underline and strikethrough to display proposed changes. OSMRE recognizes that the format of electronic permit submissions which are received from coal operators can be highly variable and that there are no specific standards in the Federal regulations which require certain formats for information submittal by electronic means. North Dakota's proposal to add specificity to their rules by incorporating these detailed requirements does not conflict with and is no less effective than the Federal Program. We, therefore, are approving it.

#### IV. Summary and Disposition of Comments

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record Document ID No. OSM-2012-0021-0001), but did not receive any.

##### *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 Document ID No. OSM-2012-0021-0005).

We received one response letter, dated December 7, 2012, from the Bureau of Land Management stating that they had no comments (Administrative Record Document ID No. OSM-2012-0021-0005).

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get 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. Under 30 CFR 732.17(h)(11)(i), OSMRE requested comments on the amendment from EPA (Administrative Record Document ID No. OSM-2012-0021-0005). 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 November 28, 2012, we requested comments on North Dakota's amendment (Administrative Record Document ID No. OSM-2012-0021-0005), but neither responded to our request. OSMRE does not believe this amendment will have an effect on historic properties given that it outlines a purely administrative process and will not affect any on-the-ground activities on surface coal mining and reclamation operations in the state of North Dakota, however we requested comments nonetheless.

#### V. OSMRE's Decision

Based on the above findings, we approve North Dakota's November 14, 2012 amendment ND-052-FOR. North Dakota has met all of the conditions outlined in the October 2, 2009 732.17(c) letter and has included all applicable revisions and/or additions to their rules.

To implement this decision, we are amending the Federal regulations at 30 CFR part 934, 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 regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

#### VI. 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 (Regulatory Planning and Review).

##### *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 OSMRE. 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, 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 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) *et seq.*).

*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. 3501 *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), of 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.
- 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: July 1, 2014.

**Ervin Barchenger,**  
*Acting Director, Western Region.*

**Editorial note:** This document was received for publication by the Office of **Federal Register** on December 10, 2014.

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 amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * * * *	*
November 14, 2012	December 16, 2014	NDAC 69–05.2–05–02 NDAC 69–05.2–05–08 NDAC 69–05.2–06–01 NDAC 69–05.2–06–02 NDAC 69–05.2–10–01 NDAC 69–05.2–10–03 NDAC 69–05.2–10–07 NDAC 69–05.2–10–08 NDAC 69–05.2–10–09

- 3. Section 934.16 is republished to read as follows:

**§ 934.16 Required program amendments.**

Pursuant to 30 CFR 732.17(f)(1), North Dakota is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with North Dakota’s established administrative or legislative procedures.

(a)–(cc) [Reserved]

[FR Doc. 2014–29384 Filed 12–15–14; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**37 CFR Part 1**

[Docket No. PTO–P–2014–0058]

**2014 Interim Guidance on Patent Subject Matter Eligibility**

**AGENCY:** United States Patent and Trademark Office, Commerce.