



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND-054-FOR; Docket ID OSM-2016-0009;
S1D1S SS08011000 SX064A000 178S180110;
S2D2S SS08011000 SX064A000 17XS501520]

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, the Office of Surface Mining Reclamation and
Enforcement (OSMRE), are announcing receipt of a proposed
amendment to the North Dakota regulatory program (North Dakota
program) under the Surface Mining Control and Reclamation Act of
1977 (SMCRA or the Act). North Dakota proposes numerous rule

changes to the North Dakota Administrative Code for surface coal mining and reclamation operations and reclamation law changes that were made during North Dakota's 2015 Legislative Session. The law changes added a definition of "commercial leonardite" and excluded oxidized lignite (leonardite) from the statutory definition of "coal." The law changes also added the phrase "or commercial leonardite" to many other sections of the reclamation law. North Dakota intends to revise its program to 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 4:00 p.m., m.d.t. [Insert date 30 days after date of publication in the Federal Register]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the Federal Register]. We will accept requests to speak until 4:00 p.m., m.d.t. on [Insert date 15 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by SATS No. ND-054-FOR, by any of the following methods:

- Mail/Hand Delivery: Division Chief, Casper Area Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street Casper, Wyoming 82601-1018.
- Fax: (307) 261-6552.
- Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to 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, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Casper Area Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Jeffrey Fleischman, Division Chief, Casper Area Office,
Office of Surface Mining Reclamation and Enforcement,
Dick Cheney Federal Building, PO Box 11018, 150 East B Street
Casper, Wyoming 82601-1018.

Telephone: (307) 261-6555.

E-mail: jfleischman@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Reclamation Division, North Dakota Public Service Commission, 600
East Boulevard, Dept. 408, Bismarck, North Dakota 58505-0480.
Telephone: (701) 328-2400.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Division Chief, Casper Area Office. Office of Surface Mining Reclamation

and Enforcement, Dick Cheney Federal Building, PO Box 11018, 150 East B Street Casper, Wyoming 82601-1018. Telephone: (307) 261-6555. E-mail: jfleischman@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, 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 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 934.15 and 934.30.

II. Description of the Proposed Amendment

By letter dated May 19, 2016 (Administrative Record No. ND-PP-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). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, North Dakota proposes numerous rule changes to the NDAC Article 69-5.2 for surface coal mining and reclamation operations and reclamation law changes that were made by Senate Bill No. 2377 during North Dakota's 2015 Legislative Session. The law changes added a definition of "commercial leonardite" and excluded oxidized lignite (leonardite) from the statutory definition of "coal" in NDCC Chapter 38-14.1, while ensuring the mining of leonardite remains subject to the same permitting and reclamation requirements as coal. The law changes also added

the phrase "or commercial leonardite" to many other sections of the reclamation law as appropriate. Similarly, the proposed rule changes primarily consist of adding the phrase "or commercial leonardite" immediately after the word "coal" when it is not part of a definition or other phrase that doesn't otherwise include "commercial leonardite."

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.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing

regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on [Insert date 15 days after date of publication in the Federal

Register]. If you are disabled and need reasonable 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 the 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 12866 - Regulatory Planning and Review

This rulemaking is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include

them in the final rule.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 22, 2017.

David Berry,
Regional Director,
Western Region.

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