

Federal Office of Surface Mining Proposes to Restore Coal Mine Regulatory Oversight Rules



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Environmental Alert

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Recognizing the “diversity in terrain, climate, biologic, chemical and other physical conditions” among the States in which coal is mined, the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, et seq. (“SMCRA”) specifies that governmental responsibility for regulating the coal industry “should rest with the States.” SMCRA § 101(f). To accomplish that, SMCRA provides for delegation of primary regulatory authority (or “primacy”) to a State if its regulatory program meets national standards. 30 U.S.C. § 1253. Residual oversight authority is vested in the Department of the Interior’s Office of Surface Mining Reclamation and Enforcement (“OSM”), which was created to ensure that primacy states adequately maintain and enforce their approved State programs and to inspect and possibly intervene where problems are reported at specific mine sites that the State regulatory authority (“SRA”) has failed to address.

The rules governing the exercise of OSM’s oversight authority with respect to primacy States under SMCRA may soon change. On June 16, 2025, OSM published a proposal to revise those regulations, essentially seeking to restore them to the form that existed prior to promulgation by the Biden administration of its own changes to those rules, entitled “Ten-Day Notices and Corrective Action for State Regulatory Program Issues” (89 Fed. Reg. 24714, April 9, 2024) (the “2024 TDN Rule”). The comment period on the proposed changes to unwind the 2024 TDN Rule closed on July 16, 2025. 90 Fed. Reg. 25174 (June 16, 2025).

Under SMCRA, if OSM has reason to believe that there may be a violation of the approved State program at a particular mine site that has not been adequately addressed by the SRA, OSM is authorized to issue a ten-day notice (or “TDN”) to a SRA. The TDN describes the alleged violation and provides the SRA with ten days to investigate and either take appropriate action to cause any violation to be addressed, or to explain to OSM why no such action was determined to be necessary (e.g., because the alleged violation no longer exists or never did exist).

In contrast to SMCRA, the 2024 TDN Rule amended the federal regulations so that OSM may issue TDNs to SRAs based on programmatic (rather than site-specific) concerns. Moreover, for the first time it allows citizens to request that OSM issue TDNs without notifying the appropriate SRA of the matter and allowing the State to investigate and attempt to resolve it. Taken together, these regulations create a scenario in which OSM may issue a TDN on the basis of an alleged *permit defect* that has no connection to any asserted environmental problem at a specific mine site. In addition to allowing third parties to circumvent the permit appeal process available under State laws, TDNs issued on that basis generally take more time to investigate and resolve with OSM, diverting limited State resources away from permitting, inspection and enforcement.

These and other changes made by the 2024 TDN Rule are the subject of a pending legal challenge filed by 14 primacy States in the U.S. District Court for the District of Columbia (*State of Indiana, et al. v. Burgum*, Civ. Action No. 1:24-cv-01655 (RBW)). On June 12, 2025, Judge Reggie B. Walton issued an Order staying that litigation and vacating all deadlines for briefing in that case, on the basis of the defendants’ stated intent to publish what became the June 16, 2025 proposal. It is likely that once the current proposal is finalized, this civil action will be dismissed as moot. Of course, if OSM finalizes its pending changes and substantially reverts to the 2020 version of OSM’s oversight regulations, it is also reasonable to assume that those groups who intervened to defend the 2024 TDN Rule will challenge such a move. Judge Walton may wish to keep his docket open.

For questions about OSM’s proposal or other issues arising under SMCRA, OSM regulations or counterpart State regulatory programs, please contact Christopher B. (Kip) Power at (681) 265-1362 or cpower@babstcalland.com;

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