

substantially diminishes A's risk of loss from holding the X stock, the X stock and the equity swap are offsetting positions within the meaning of section 1092(c). The remaining question is whether these are positions with respect to personal property.

(ii) *The swap leg as a position with respect to personal property.* The equity swap contract is a position with respect to personal property as defined by section 1092(d)(1). Although section 1092(d)(3)(A) generally excludes stock from the definition of personal property, this exclusion does not apply to interests in stock. Therefore, stock can be personal property when testing whether an interest in the stock, other than a direct interest in, or a short sale of, the stock, is a position with respect to personal property. Because the equity swap contract is an interest in actively traded stock, the equity swap contract is a position with respect to personal property.

(iii) *The stock leg as personal property.* As described below, ownership of the X stock is also a position with respect to personal property.

(A) *The rule of section 1092(d)(3)(B)(i)(II).* Under section 1092(d)(3)(B)(i)(II) and paragraph (a)(1)(ii) of this section, stock is not excluded from the definition of personal property if it is part of a straddle at least one of the offsetting positions of which is a position with respect to substantially similar or related property (other than stock).

(B) *The swap as a position with respect to substantially similar or related property (other than stock) for purposes of section 1092(d)(3)(B)(i)(II).* Under paragraph (b) of this section, the equity swap contract is a position with respect to property that is substantially similar or related to the X stock because A is entitled to payments under the equity swap contract that are attributable to the decline in the value of the X stock. See § 1.246-5(c)(7). Under section 1092(d)(3)(B)(i)(II) and paragraph (c) of this section, the equity swap contract is a position with respect to substantially similar or related property (other than stock) because it is not direct ownership of stock or a short sale of stock.

(C) *The stock as part of a straddle for purposes of the test of section 1092(d)(3)(B)(i)(II).* In determining whether the X stock is part of a straddle for purposes of the test of section 1092(d)(3)(B)(i) and paragraph (a)(1) of this section, section 1092(d)(3)(C) treats the X stock as personal property. Because the stock is treated as personal property for this purpose, because the equity swap contract is a position with respect to personal property (see paragraph (d)(2)(ii) of this section), and because the X stock and the equity swap contract are offsetting positions (see paragraph (d)(2)(i) of this section), the straddle test in section 1092(d)(3)(B)(i) and paragraph (a)(1) of this section is satisfied. Accordingly, under section 1092(d)(3)(B), the stock is personal property for all purposes of section 1092.

(iv) *The two legs as a straddle.* Because ownership of the X stock and the equity swap contract are offsetting positions with respect to personal property, the X stock and the equity swap contract are a straddle to A within the meaning of section 1092(c)(1).

(e) *Effective dates*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to positions established on or after May 1, 1995.

(2) *Special rules for substantially similar or related property*—(i) *In general.* Paragraph (b) of this section applies to positions established on or after March 17, 1995.

(ii) *Special rule for certain straddles.* Paragraph (b) of this section applies to positions established after March 1, 1984, if the taxpayer substantially diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(A) Holding offsetting positions consisting of stock and a convertible debenture of the same corporation where the price movements of the two positions are related; or

(B) Holding a short position in a stock index regulated futures contract (or alternatively an option on such a regulated futures contract or an option on the stock index) and stock in an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or alternatively a portfolio of stocks whose performance mimics the performance of the stocks included in the stock index).

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

[FR Doc. 95-10755 Filed 5-1-95; 8:45 am]

BILLING CODE 4830-01-U

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

#### North Dakota 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 amendment.

**SUMMARY:** OSM is 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). The proposed amendment consists of revisions to and additions of statutory provisions pertaining to the North Dakota program's Small Operator Assistance Program and individual civil penalties. The amendment is intended to revise the North Dakota program to be

consistent with the corresponding Federal regulations and SMCRA.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t., June 1, 1995. If requested, a public hearing on the proposed amendment will be held on May 30, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., on May 17, 1995.

**ADDRESSES:** Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. "B" Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776  
North Dakota Public Service Commission, Reclamation Division, Capitol Building, Bismarck, ND 58505-0165, Telephone: (701) 224-4092

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (307) 261-5776.

#### SUPPLEMENTARY INFORMATION:

#### I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning the North Dakota program and program amendments can be found at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

#### II. Proposed Amendment

By letter dated April 12, 1995, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Amendment number XXII, Administrative Record No. ND-W-01). North Dakota submitted the proposed amendment in response to the required program amendment at 30 CFR 934.16(y) and in response to an