

operation" rudder pedal arm assembly with a new, improved rudder pedal arm assembly.

(i) For Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes: Replace within 5,200 flight hours after the inspection in paragraph (a)(1) of this AD.

(ii) For MD-11 and MD-11F airplanes: Replace within 4,200 flight hours after the inspection in paragraph (a)(1) of this AD.

#### Conditions 3 and 4: Wall Thickness Not Within Limits; Clevis Cracked or Broken

(d) During the inspection per paragraph (a) of this AD, if the wall thickness of the rudder pedal arm assembly is not within the design specifications or the acceptable operational limits specified in the applicable service bulletin; or during any inspection per paragraph (a)(1) or (b) of this AD, if the clevis of the rudder pedal assembly is cracked or broken: Before further flight, replace the rudder pedal assembly with a new, improved rudder pedal assembly per Condition 3 or 4, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin DC10-27A233, Revision 01, dated June 6, 2002 (for Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F, DC-10-30F (KC10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F airplanes); or Boeing Alert Service Bulletin MD11-27A080, Revision 01, June 6, 2002 (for MD-11 and MD-11F airplanes); as applicable. Such replacement terminates any repetitive inspections required by this AD.

#### Parts Installation

(e) As of the effective date of this AD, no person shall install a rudder pedal arm assembly having part number ABH7239-1 or ABH7239-2 on any airplane unless the parts meet the dimensional and crack-free requirements of paragraph (b) of this AD and the repetitive inspections required by that paragraph are accomplished.

#### Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

#### Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### Incorporation by Reference

(h) The actions shall be done in accordance with Boeing Alert Service Bulletin DC10-27A233, Revision 01, dated June 6, 2002; or

Boeing Alert Service Bulletin MD11-27A080, Revision 01, June 6, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### Effective Date

(i) This amendment becomes effective on January 8, 2004.

Issued in Renton, Washington, on November 26, 2003.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-30109 Filed 12-3-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

[ND-044-FOR, Amendment No. XXXIII]

#### North Dakota Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving a proposed 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 proposed revisions to and additions of rules about valid existing rights, the process for determining whether or not a mine operator has valid existing rights, lands prohibited from mining, changes in the format of permit applications, general requirements for mining plans, land descriptions for partial bond release requests, filing requirements for copies of reports required by the State Health Department, sediment control measures, and removal of sedimentation ponds. North Dakota intended to revise its program to be consistent with the corresponding Federal regulations and SMCRA, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

**EFFECTIVE DATE:** December 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: 307/261-6550; Internet address: [GPadgett@osmre.gov](mailto:GPadgett@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 (OSM) Findings
- IV. Summary and Disposition of Comments
- V. OSM'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 February 10, 2003, North Dakota sent us an amendment to its program (Amendment number XXXIII, Administrative Record No. ND-HH-01 under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment in response to an April 2, 2001, letter (Administrative Record No. ND-HH-02) that we sent to North Dakota in accordance with 30 CFR 732.17(c), and to include changes made at its own initiative.

The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise or add are:

- (1) NDAC 69-05.2-01-02(120), Definition of Valid Existing Rights; (2) NDAC 69-05.2-04-01.1 through 01.7, Processing Requests for Valid Existing Rights and Exceptions from Areas Prohibited from Mining; (3) NDAC 69-05.2-05-01, Copies and format of permit applications; (4) NDAC 69-05.2-

09–01, General Requirements for Mining Plans; (5) NDAC 69–05.2–12–12, Bond release requirements; (6) NDAC 69–05.2–16–04, Sediment control measures under the general water management requirements; (7) NDAC 69–05.2–16–05, Water discharge reports; and (8) NDAC 69–05.2–16–09, Removal of water management structures.

We announced receipt of the proposed amendment in the June 3, 2003, **Federal Register** (68 FR 33035). 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 No. ND–HH–08). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 3, 2003. We did not receive any comments.

### III. OSM'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 or Statutes That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and/or SMCRA*

1. NDAC 69–05.2–01–02(120), Definition of Valid Existing Rights.(30 CFR 761.5)

2. NDAC 69–05.2–04–01.1 through 01.7, Processing Requests for Valid Existing Rights and Exceptions from Areas Prohibited from Mining.

a. NDAC 69–05.2–04–01.1, Areas Unsuitable for Mining—Areas where surface coal mining operations are prohibited or limited (30 CFR 761.11).

b. NDAC 69–05.2–04–01.2, Areas Unsuitable for Mining—Exception for existing operations from areas where mining is prohibited (30 CFR 761.12).

c. NDAC 69–05.2–04–01.3, Areas Unsuitable for mining—Procedures for relocating or closing a public road or waiving the buffer zone for a public road (30 CFR 761.14).

d. NDAC 69–05.2–04–01.4, Areas Unsuitable for Mining—Procedures for waiving the prohibition on mining within the buffer zone around an occupied dwelling (30 CFR 761.15).

e. NDAC 69–05.2–04–01.5, Areas Unsuitable for mining—Submission of requests for valid existing rights determinations (30 CFR 761.16).

f. NDAC 69–05.2–04–01.6, Areas Unsuitable for mining—Processing requests for valid existing rights determinations (30 CFR 761.16(c)–(g)).

g. NDAC 69–05.2–04–01.7, Areas Unsuitable for mining—Commission

obligations at time of permit application review (30 CFR 761.17).

Because these proposed rules contain language that is the same or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

#### *B. Revisions to North Dakota's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations*

1. NDAC 69–05.2–05–01, Copies and Format of Permit Applications

This revision of North Dakota's rules would allow permit applications to be filed in an electronic format approved by the North Dakota Public Service Commission. In addition, it would require that the applicant send a complete copy of the permit application to the Bureau of Land Management (BLM) when Federal lands are located in the permit area.

The Federal regulations at 30 CFR 777.11(a)(3) state that an application shall "be filed in the format required by the regulatory authority." Therefore the State's revision concerning electronic filing is allowed and is no less effective than the Federal rules. There is no Federal counterpart to the North Dakota requirement that a copy of the application be sent to BLM and OSM when Federal lands are located in the permit area; it is therefore no less effective than the Federal rules.

2. NDAC 69–05.2–16–04, Sediment Control Measures Under the General Water Management Requirements

Under this proposed change, sediment ponds remain the primary structure for treating runoff from disturbed areas. However, the proposal allows the use of sediment ponds or "other sediment control measures" to control runoff from disturbed areas. The term, "other sediment control measures," is defined as the use of the best technology currently available to meet applicable effluent limitations and, to the extent possible, minimize erosion and prevent additional contributions of sediment to streamflow or to runoff outside the permit area. The term includes a number of different methods such as sumps, check dams, berms, silt fences, bale dikes, sediment filters, riprap, mulches, and other measures to reduce runoff, trap sediment or treat runoff water. The use of "other sediment control measures" is limited to small disturbed areas or reclaimed areas that have been properly stabilized against erosion and must be approved by the State Department of Health.

These changes are consistent with the new rules recently adopted by the U.S. Environmental Protection Agency (EPA) that allow the installation of best management practices as the standard for treating runoff from reclaimed lands in the western United States (January 23, 2002, at 67 FR 3370). Therefore they are no less effective than the Federal regulations at 30 CFR 816.42.

3. NDAC 69–05.2–16–05(1)(b)(3), Water Discharge Reports

Currently, copies of the North Dakota pollutant discharge elimination system (NDPDES) report must be submitted to the North Dakota Public Service Commission on the schedule required by the NDPDES permit. The rule states that reports have to be filed on a quarterly basis. However, the proposed revised rule would require mining companies to submit the report on the same schedule as required by the State Health Department. The State Health Department has modified some NDPDES permits for some mines to require reports on a semiannual basis. EPA gives this authority to State Health Departments. Other surface water monitoring reports must be submitted quarterly. Based on this, the proposed State rule is no less effective than the Federal regulations.

The Federal regulations at 30 CFR 816.41(e)(2) state that "The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System reporting requirements."

The proposed revision in the State rules are no less effective than the Federal regulations.

4. NDAC 69–05.2–16–09, Removal of Water Management Structures

The proposed revision concerns requirements for the removal of ponds and other sediment control structures. Added language requires "other sediment control structures" to remain in place for at least two years following the last seeding in the reclaimed watershed. This change is connected to the proposed change (at NDAC 69–05.2–04) to allow the substitution of other sediment control structures for sedimentation ponds once a reclaimed tract is topsoiled and stabilized against erosion. As in the Federal rule (30 CFR 816.46(b)(5)), these structures cannot be removed unless approved by the regulatory authority. The proposed State rule is no less effective than the Federal regulations.

### *C. Revisions to North Dakota's Rules That Have No Federal Counterpart*

#### 1. NDAC 69–05.2–12–12, Bond Release Requirements

This revision to North Dakota's rules specifies that when lands are proposed to undergo partial bond release, the release application must be accompanied by either a legal description of the area or by a map that clearly depicts and identifies the lands to be released. Allowing a map in place of a legal description will encourage the submission of more partial bond release applications. There is no Federal counterpart to the State's proposal. According to 30 CFR 730.11(b) of the Federal regulations, in these cases, the State rule shall not be construed to be inconsistent with (SMCRA). Therefore it is no less effective than the Federal regulations.

#### 2. NDAC 69–05.2–09–01, Permit Applications—Operation Plans—General Requirements

This North Dakota provision requires that if coal removal areas are proposed within 500 feet of any farm building, the applicant must provide documentation showing compliance with the State's surface owners protection act (North Dakota Century Code 38–18–07). There is no Federal counterpart to this North Dakota provision. According to 30 CFR 730.11(b) of the Federal regulations, in these cases, the State rule shall not be construed to be inconsistent with (SMCRA). Therefore it is no less effective than the Federal regulations.

### **IV. Summary and Disposition of Comments**

#### *Public Comments*

We asked for public comments on the amendment in the June 3, 2003, **Federal Register** (68 FR 33035), but received none (Administrative Record ND-HH–08).

#### *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 No. ND-HH–04).

On March 3, 2003, the State Conservationist with the Natural Resources Conservation Service (NRCS), replied that NRCS had no comments (Administrative Record No. ND-HH–06).

### *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.*).

On February 21, 2003, we asked for agreement on the amendment (Administrative Record No. ND-HH–04). On March 31, 2003, the Director of the Ecosystems Protection Program with the EPA sent us the following comment: "We believe the proposed program amendments to be consistent with 40 CFR Part 434 and, therefore, have no concerns." (Administrative Record No. ND-HH–07)

#### *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 February 21, 2003, we requested comments on North Dakota's amendment (Administrative Record No. ND-HH–04), but neither responded to our request. North Dakota's SHPO responded on March 5, 2003, that "We have reviewed (the amendment) and have no comments." (Administrative Record No. ND-HH–05).

### **V. OSM's Decision**

Based on the above findings, we approve North Dakota's February 10, 2003, amendment, as follows: (1) NDAC 69–05.2–10–02 (120), Definition of Valid Existing Rights; (2) NDAC 69–05.2–04–01.1 through 01.7, Processing requests for valid existing rights and exceptions from areas prohibited from mining; (3) NDAC 69–05.2–05–01, Copies and format of permit applications; (4) NDAC 69–05.2–09–01, Permit applications—Operation plans—General requirements; (5) NDAC 69–05.2–12–12, Bond release requirement; (6) NDAC 69–05.2–16–04, Sediment control measures under the general water management requirements; (7) NDAC 69–05.2–16–05(1)(b)(3), Water discharge reports; (8) NDAC 69–05.2–16–09, Removal of water management structures.

We approve the rules as proposed by North Dakota with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

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 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, 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)).

*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 largely 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 largely 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 largely 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: October 29, 2003.

**Allen D. Klein,**  
*Regional Director, Western Regional Coordinating Center.*

■ 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
Feb. 10, 2003	Dec. 4, 2003	NDAC 69–05.2–01–02(120) NDAC 69–05.2–04–01.1 through 01.7 NDAC 69–05.2–05–01 NDAC 69–05.2–09–01 NDAC 69–05.2–12–12 NDAC 69–05.2–16–04 NDAC 69–05.2–16–05(1)(b)(3) NDAC 69–05.2–16–09