§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–13–02 Diamond Aircraft Industries, Inc.: Amendment 39–10062; Docket 97–CE–36–AD.

Applicability: Model DA 20–A1 airplanes, serial numbers 10002 through 10287, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued June 12, 1997, which made these actions effective immediately upon receipt.

To prevent the pilot's shoe from becoming jammed between the rudder pedal and firewall which could result in loss of control of the airplane, accomplish the following:

(a) Prior to further flight after the effective date of this AD, fabricate a placard in 1/8-inch letters with the words ''SPINS PROHIBITED'', and install this placard in the airplane cabin within the pilot's clear view.

(b) Prior to further flight after the effective date of this AD, insert a copy of this priority letter AD into the limitations section of the Airplane Flight Manual (AFM).

(c) Fabricating and installing the placard and inserting a copy of this AD into the AFM limitations section may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the airplane's records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations.

(d) Within the next 30 days after the effective date of this AD, modify the rudder control pedal area in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Diamond Alert Service Bulletin No. DA20–53–01A, Rev. 0, dated June 5, 1997.

(e) Accomplishing the modification in paragraph (d) of this AD eliminates the need for the placard and AFM limitations requirements specified in paragraphs (a) and (b) of this AD.

(f) 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.

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office, 2300 East Devon Ave., Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Chicago Aircraft Certification Office.

(h) The modification required by this AD shall be done in accordance with Diamond Aircraft Alert Service Bulletin No. DA20–53–01A, Rev. 0, dated June 5, 1997. 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 Diamond Aircraft Industries, Inc., 1560 Crumlin Sideroad, London, Ontario, Canada N5V 1S2. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment (39–10062) becomes effective on July 14, 1997 to all persons except those persons to whom it was made immediately effective by priority letter AD 97–13–02, issued June 12, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on June 26, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–17450 Filed 7–2–97; 8:45 am]

BILLING CODE 4910–13–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2200, 2203, 2204

Revisions to Procedural Rules Governing Practice Before the Occupational Safety and Health Review Commission

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This document makes several revisions to the procedural rules governing practice before the Occupational Safety and Health Review Commission.

DATES: Effective July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 606–5410, Occupational Safety and Health Review Commission, 1120 20th St., N.W., Ninth Floor, Washington, DC 20036–3419.

SUPPLEMENTARY INFORMATION: On March 14, 1997 the Commission published in the **Federal Register** several proposed changes to its Rules of Procedure. 62 FR 12134 (March 14, 1997). The Commission found the comments received pursuant to that proposal to be very helpful. As a result, several proposals have been modified or eliminated. The Commission wishes to thank those who responded for their time and interest, and the quality of their comments.

1. Service and Notice

The Commission proposed amending Rule 7(g) by revising the language in the form at the end of the rule from ''All pleadings relevant to this matter may be inspected at:'' to ''All papers relevant * * *'' This is a technical change that conforms the form to the language in the first paragraph of the rule and should have no significant impact on Commission practice. The Commission received no comments regarding this change and the Commission adopts the amendment as proposed.

2. Facsimile Transmission

The Commission proposed amending Rule 8(f) to allow a document to be filed with the Commission by facsimile transmission only when all of the parties are served by fax. The purpose of the amendment was to prevent confusion regarding the time of filing and, therefore, the applicability of the 3-day mail box.

All comments addressing this proposed rule were opposed to the amendment. The commentators opined that the Commission is addressing a nonexistent problem and suggested that there is no confusion regarding the date of service when a party is served by mail and the document filed with the Commission by fax because dates are calculated from the time of service on the parties, not when the document is received by the Commission. The commentators also noted that, under the proposal, faxing would be prohibited whenever one of the parties (probably a pro se) does not have a fax machine.

The Commission finds the comments to be well-taken and it withdraws the proposed amendment.

3. Claims of Privilege

Currently, Rule 11(c) allows a party fifteen days to respond to another party's claim of privilege. The Commission proposed amending its rule to require that the time for responding to such claims be ten days, the same as other motions.

While the proposal found no support, four commentators expressed similar

objections. The primary objection to the rule was that by reducing the time a party has to object to a claim of privilege, the Commission was dramatically increasing the likelihood that the judge would be interjected into the discovery process because (1) the parties would no longer have the time to work out their dispute, and (2) the requesting party would not have the time to determine whether any ''privileged'' information requested was sufficiently necessary to require judicial intervention. Noting that there is no similar time limit in the Federal Rules, the commentators suggested that, rather than reduce the time to object, the Commission eliminate the time limit in its entirety. The opposition included both the Secretary of Labor and experienced practitioners before the Commission. In light of these comments, the Commission will reconsider whether to keep the current rule, raise rather than reduce the time for responding to a claim of privilege, or eliminate the rule in its entirety. Accordingly, the proposed amendment is withdrawn.

4. Opposition to Motions

The Commission proposed amending Rule 40(a) to require that a moving party contact the other parties to determine whether there is any opposition to a motion.

Several commentators were concerned about the possible burden the rule would place on them, especially where there may be difficulty in contacting the other party. While the Commission finds the concern to be well-taken, it is the Commission's view that a rule that requires a moving party to determine if there is any opposition would help streamline Commission practice by allowing judges to rule quickly on unopposed motions. However, the proposed rule has been revised to address the concerns of the commentators. Accordingly, the moving party will be required to make ''reasonable efforts'' to determine whether there is any opposition to its motion.

The Commission was also concerned with a commentator's opinion that it would be a waste of time to determine whether there are any objections to motions that would obviously be opposed. It is the Commission's view that attempts to restrict applicability of the rule to those motions that ''might'' encounter opposition would be too subjective to be effective.

Another commentator was concerned that the rule would require the moving party to determine not only if the motion will be opposed, but also the nature of the opposition. The concern is misplaced. The rule does not call on the moving party to determine the nature of or grounds for the opposition.

5. Subpoenas

The Commission proposed a new Rule 57(b) to explicitly allow subpoenas to be served either by certified mail with return receipt, or by leaving a copy of the subpoena at the named person's principal place of business or residence. Currently, the Commission applies Federal Rule of Civil Procedure 45(b)(1) which provides only for personal service. It is the opinion of the Commission that any benefit obtained by requiring personal service does not justify the additional expense to the parties.

The proposal was generally supported by the commentators and the rule is adopted as proposed. The Commission's subpoena forms will be revised to coincide with new Rule 57(b).

6. Notification of Hearing

The Commission proposed amending Rule 60 to reduce the minimum time for a notice of hearing from thirty to twenty days.

One commentator suggested that the shorter notice would force employers to be rushed and ill-prepared for hearing. Another commentator opined that the mail time involved would reduce the effective notice to well below twenty days.

It is the experience of the Commission that the current minimum notice period is rarely invoked. Hearing dates must comply with the judge's calendar, which almost always dictates that more than 30 days notice be given. Simple cases, which may have been more appropriate for an early hearing, are now often scheduled under E–Z trial procedures, where the 30-day limitation does not apply. Accordingly, the Commission will not reduce the minimum 30-day notice period for the initial scheduling of the hearing.

A question, however, arises where the hearing is being rescheduled. Under the present rule, at least ten days notice is required for previously postponed hearings. The provision does not apply to rescheduled hearings that have not been previously postponed. Accordingly, such cases cannot be rescheduled in less than thirty days. The Commission finds that previously unpostponed hearings should be rescheduled on the same basis as previously postponed hearings. Accordingly, the proposed rule is revised to allow a minimum of ten days notice for all rescheduled hearings.

7. Elimination of 20-day Transmittal Period for Judges' Decisions

The Commission proposed amending Rule 90(b)(2) to eliminate the twenty day transmittal period for Judges' decisions. This twenty day period was instituted at a time when the Commission's case load was substantially heavier and the Commission was burdened by last-minute petitions for discretionary review.

One commentator who supported the idea of eliminating the 20-day period opined that the period served a useful purpose by allowing a judge to correct mistakes or reconsider decisions. This commentator suggested that the judges' discretion to use the period is particularly valuable in large and complex cases. The Commission appreciates this observation. However, it appears that the Commission's judges have rarely been asked to reconsider their decisions during the 20-day period.

The Secretary strongly opposed the proposal. Noting that she is a party in every case, the Secretary suggested that elimination of the 20-day period would constitute a special hardship for her office. The Secretary suggested that the proposal, if adopted, would not leave her with sufficient time to make an informed decision on whether to seek review. This, she contends, would result in the filing of preemptive petitions for review, which might, upon further review, be withdrawn.

While the Commission appreciates the Secretary's schedule problems, it notes that it has an obligation to decide cases in a quick and efficient manner. The Commission also recognizes, however, that no efficiencies will be gained by forcing the Secretary into filing preemptory petitions for review.

Accordingly, in light of the above comments, the Commission will reduce the waiting period to 10-days, and will monitor the impact of this change to determine whether further reductions in the waiting period are practical.

8. Number of Copies Submitted to the Commission

The Commission proposed amending Rules 8(d)(2), 91(h) and 93(h) to require that when a case is before the Commission the original plus eight copies of a petition for review, brief or other document be filed. The Commission has found that the four copies required under the current rule are inadequate. As a result, the Commission spends time and incurs expense to make the necessary copies. This amendment would rectify the situation.

The only objection to these amendments was received from the Secretary who, noting that she would be affected in every case, was concerned about the cost to her of the additional copies. While the Secretary correctly notes that she is a party in every case and that the burden and expense of the extra copies will fall harder on her than on other parties the Commission observes that it also is involved in every case, and must have adequate copies of every document from both parties. Therefore, the expense of reproducing the necessary copies falls even harder on the Commission. It is the Commission's view that the burden of providing the necessary copies of documents is properly placed on the parties. Accordingly, the proposed amendments are adopted.

9. Amendments to the Commission's Rules Implementing the Equal Access to Justice Act

To conform to recent amendments to the EAJA, the Commission proposed amending its EAJA Rule 107 to change the hourly rate from $75 per hour to $125 per hour.

The Commission also proposed amending EAJA Rule 301 to conform to its decision in *Asbestos Abatement Consultation and Engineering,* 15 BNA OSHC 1252, 1254–56, 1991–93 CCH OSHD ¶ 29,464, pp. 39,731–32 (No. 87–1522,1991), which held that applications for EAJA awards must be received by the Commission within thirty days of the final order date.

The proposed amendments were well-received and the Commission adopts them as proposed.

List of Subjects

29 CFR Part 2200

Hearing and appeal procedures, Administrative practice and procedure.

29 CFR Part 2203

Sunshine Act, Information, Public meetings.

29 CFR Part 2204

Administrative practice and procedure, Equal access to justice.

Text of Amendment

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Parts 2200, 2203 and 2204 of the Code of Federal Regulations as follows:

PART 2200—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted.

2. Section 2200.7 is amended by revising paragraph (g) to read as follows:

§ 2200.7 Service and notice.

In § 2200.7(g) remove the words ''All papers relevant to this matter may be inspected at:'' and add in their place the words ''All pleadings relevant to this matter may be inspected at:''

3. Section 2200.8 is amended by revising paragraph (d)(2) to read as follows:

§ 2200.8 Filing.

* * * * *

(d) *Number of copies.*

* * * * *

(2) If a case is before the Commission for review, the original and eight copies of a document shall be filed.

* * * * *

4. Section 2200.40 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 2200.40 Motions and requests.

(a) *How to make.* * * * Prior to filing a motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

* * * * *

5. In § 2200.57 paragraphs (b)–(d) are redesignated (c)–(e) and a new paragraph (b) is added to read as follows:

§ 2200.57 Issuance of subpoenas; petitions to revoke or modify subpoenas; right to inspect or copy data.

* * * * *

(b) *Service of subpoenas.* A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein may be made by service on the person named, by certified mail return receipt requested, or by leaving a copy at the person's principal place of business or at the person's residence with some person of suitable age and discretion residing therein.

* * * * *

6. Section 2200.60 is amended by revising the second sentence to read as follows:

§ 2200.60 Notice of hearing; location.

* * * If a hearing is being rescheduled, or if exigent circumstances are present, at least ten days' notice shall be given.* * *

7. Section 2200.90 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§ 2200.90 Decisions of judges.

* * * * *

(b) * * *

(2) *Docketing of Judge's report by Executive Secretary.* On the eleventh day after the transmittal of his decision to the parties, the Judge shall file his report with the Executive Secretary for docketing.* * *

* * * * *

8. Section 2200.91 is amended by revising the first two sentences of paragraphs (b) and all of paragraph (h) to read as follows:

§ 2200.91 Discretionary review; petitions for discretionary review; statements in opposition to petitions.

* * * * *

(b) *Petitions for discretionary review.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review. Discretionary review by the Commission may be sought by filing with the Judge a petition for discretionary review within the 10-day period provided by § 2200.90(b)(2).* * *

* * * * *

(h) *Number of copies.* An original and eight copies of a petition or a statement in opposition to a petition shall be filed.

9. Section 2200.93 is amended by revising paragraph (h) to read as follows:

§ 2200.93 Briefs before the Commission.

* * * * *

(h) *Number of copies.* The original and eight copies of a brief shall be filed. See § 2200.8(d)(2).

* * * * *

§§ 2200.11, 2200.57, 2200.67, 2200.101 [Amended]

10. In §§ 2200.11, 2200.57, 2200.67, and 2200.101 all references to ''subpena'' are revised to read ''subpoena'' and all references to ''subpenas'' are revised to read ''subpoenas'' wherever they appear.

PART 2203—[AMENDED]

1. The authority for Part 2203 continues to read as follows:

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552b(d)(4); 5 U.S.C. 552b(g).

2. Part 2203 is amended as follows:

§ 2203.3 [Amended]

Section 2203.(b)(10) is revised by changing the reference to ''subpena'' to read ''subpoena.''

PART 2204—[AMENDED]

1. The authority for Part 2204 continues to read as follows:

Authority: Section 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

2. Section 2204.107 is amended by revising the first sentence of paragraph (b) to read:

§ 2204.107 Allowable fees and expenses.

* * * * *

(b) An award for the fee of an attorney or agent under these rules shall not exceed $125 per hour, unless the Commission determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for Commission proceedings, justifies a higher fee. * * *

* * * * *

3. Section 2204.301 is revised to read as follows:

§ 2204.301 Filing and service of documents.

An EAJA application is deemed to be filed only when received by the Commission. In all other respects, an application for an award and any other pleading or document related to an application shall be filed and served on all parties to the proceeding in accordance with §§ 2200.7 and 2200.8, except as provided in § 2204.202(b) for confidential financial information.

Dated: June 26, 1997.

Stuart E. Weisberg,

Chairman.

Dated: June 26, 1997.

Daniel Guttman,

Commissioner.

[FR Doc. 97–17381 Filed 7–2–97; 8:45 am]

BILLING CODE 7600–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–104–FOR]

Virginia Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia abandoned mine land reclamation plan (hereinafter referred to as the ''Virginia plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to streamline Virginia's total AMLR plan to be consistent with the Federal regulations.

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Plan
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Virginia Plan

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 30 CFR 946.20 and 946.25.

II. Submission of the Proposed Amendment

By letter received February 29, 1996 (Administrative Record No. VA–871), the Virginia Division of Mined Land Reclamation (DMLR) submitted a proposed Program Amendment to the Virginia Program. This amendment is intended to streamline Virginia's total AMLR plan to more closely parallel the Federal state reclamation plan information requirements of 30 CFR 884.13.

The proposed revisions to the Virginia Program concern: the purpose of the State reclamation program; ranking and selection; coordination with other programs; land acquisition, management and disposal; reclamation on private land; rights of entry; public participation policies; organization; staffing policies; purchasing and procurement; accounting system; location of known or suspected eligible land and water; description of problems occurring on lands and waters (map); reclamation proposals; economic base; aesthetic, historic or cultural, and recreation values; and endangered and threatened plant, fish, wildlife and habitat. The primary purpose of the amendment is to incorporate the 1990 amendments to SMCRA, and the AMLR provisions of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992).

OSM announced receipt of the proposed amendment in the March 18, 1996, **Federal Register** (61 FR 10919), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on April 17, 1996. No public hearing was requested, so none was held.

During its review of the amendment, OSM identified concerns relating to various sections of the proposed plan and provided draft comments to the State (Administrative Record Number VA–898). OSM representatives met with DMLR representatives on October 31, 1996, and November 4, 1996, to resolve comments included in the draft list prepared by OSM (Administrative Record Number VA–899).

On November 19, 1996, OSM conducted a telephone conference with DMLR representatives, and on November 20, 1996, OSM representatives met with DMLR representatives to continue to resolve issues in the draft issues list. The results of the November 19, 1996, teleconference and the November 20, 1996, meeting, including the changes proposed by the DMLR to be made to the Virginia plan submittal, are documented in the Virginia Administrative Record Number VA–900. In addition, VA–900 contains copies of the forms (Lien Waiver, Right of Entry, Claim of Lien, and AML Complaint Investigation) that the DMLR uses to implement the Virginia program. These forms are considered by OSM to be part of the Virginia plan submittal.

On December 5, 1996, OSM conducted a telephone conference with DMLR representatives to resolve the remaining issues. The results of that telephone conference are documented at Administrative Record Number VA–901.

On December 10, 1996, Virginia submitted draft language to the U.S. Fish and Wildlife Service (USFWS) to address USFWS comments made on April 4, 1996 (Administrative Record Number VA–904).

On January 7, 1997, the USFWS recommended further modifications to the endangered and threatened species section of the proposed AMLR plan amendment wording (Administrative Record Number VA–905).

On February 6, 1997, OSM provided USFWS with Virginia's AMLR plan language that was revised in response to USFWS comments on endangered and threatened species (Administrative Record Number VA–906).