

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