

lieu of Form BE-11B(LF) or Form BE-11B(SF).

(iii) Form BE-11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$40 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 2007 only, a Form BE-11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) None of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$40 million (positive or negative). (However, affiliates that were established or acquired during the year and for which at least one of these items was greater than \$10 million but not over \$40 million must be listed, and key data items reported, on a supplement schedule on Form BE-11A.)

(B) For fiscal year 2007 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$100 million (positive or negative).

(C) For fiscal years other than 2007, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(D) Its U.S. parent (U.S. Reporter) is a bank.

(E) It is itself a bank.

(v) Notwithstanding paragraph (f)(3)(iv) of this section, a Form BE-11B(LF), (SF), (EZ) or BE-11C must be filed for a foreign affiliate of the U.S. Reporter that owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

\* \* \* \* \*

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BILLING CODE 3510-06-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

[ND-048-FOR, Amendment No. XXXV]

#### 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 its statute which reduce notice requirements associated with bond release applications. North Dakota intends to revise its program to improve operational efficiency.

**EFFECTIVE DATE:** November 28, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Acting Field Office Director Frank Atencio, Telephone: 307/261-6550, e-mail address: [fatencio@osmre.gov](mailto:fatencio@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 April 20, 2005, North Dakota sent us an amendment to its program (amendment number XXXV, Administrative Record No. ND-JJ-01) under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes made at the State's initiative. The provisions of its North Dakota Century Code (NDCC) that North Dakota proposed to revise are NDCC 38-14.1-17.1.a and b, Release of performance bond "Schedule—Notification—Public hearing.

We announced receipt of the proposed amendment in the July 5, 2005, **Federal Register** (70 FR 38639), Administrative Record No. ND-JJ-07. 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. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 4, 2005. We received one comment from the North Dakota State University.

#### 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. Minor Revisions to North Dakota's Statute

North Dakota proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved statute: NDCC 38-14.1-17.1.a and b.

Because these changes are minor, we find that they will not make North Dakota's statute less stringent than SMCRA.

##### B. Revisions to North Dakota's Statute That Have the Same Meaning as the Corresponding Provisions of SMCRA

The following revisions to the NDCC proposed by North Dakota contain language that is the same as or similar to the corresponding sections of SMCRA.

NDCC 38-14.1-17.1.a and b (SMCRA 519(a)), [Release of performance bond-Schedule-Notification-Public hearing]

The first change deletes the requirement that the permittee publish newspaper notices in daily newspapers of general circulation in the mine's locality. However, the permittee is still required to publish bond release

notices, once a week for four consecutive weeks, in the official county newspaper where the bond release tract is located. SMCRA requires that the bond release notice be published in a newspaper of general circulation in the locality of the mine. The publication of the notice in the official county newspaper where the bond release is located is consistent with that provision.

The second change in this amendment deletes the language that requires the permittee to send bond release notices to subsurface owners of tracts proposed for bond release. Mining companies will still be required to send bond release notices to surface owners of the bond release tract and the adjoining property owners. This is consistent with the Federal counterpart in SMCRA that requires applicants to submit as part of any bond release application copies of letters which the applicant has sent to adjoining landowners and others in the locality in which the mining took place notifying such entities of the applicant's intention to seek bond release.

Because this North Dakota statute change contains language that is the same as or similar to SMCRA, we find that it is no less stringent than SMCRA.

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

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. ND-JJ-03). North Dakota State University replied on May 18, 2005, that it agreed with the amendment (Amendment Record No. ND-JJ-04).

##### **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-JJ-03). Two Federal agencies (U.S. Natural Resources Conservation Service and U.S. Geological Survey) sent us letters (May 23, 2005 and June 7, 2005, respectively) stating that they had no comments.

##### *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 Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that North Dakota proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

##### *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 April 25, 2005, we requested comments on North Dakota's amendment (Administrative Record No. ND-JJ-03), but neither SHPO or ACHP responded to our request.

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

Based on the above findings, we approve North Dakota's April 20, 2005, amendment.

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 SMGRA (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. 4321 *et seq.*).

*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. 3501 *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 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) of 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 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 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: September 29, 2005.

**Allen D. Klein,**

*Regional Director, Western Regional.*

■ 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
* * * * *	* * * * *	* * * * *
April 20, 2005 .....	November 28, 2005 .....	NDCC 38–14.1–17.1.a and 2005b.

[FR Doc. 05–23324 Filed 11–25–05; 8:45 am]  
BILLING CODE 4310–05–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 050426117–5117–01; I.D. 110905E]

**Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #10 - Adjustment of the Recreational Fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; modification of fishing seasons; request for comments.

**SUMMARY:** NMFS announces a regulatory modification in the recreational fishery from Leadbetter Point, WA, to Cape Falcon, OR (Columbia River Subarea). Effective Friday, September 17, 2005, the daily bag limit for the Columbia River Subarea was modified as follows: “All Salmon, two fish per day, all retained coho must have a healed adipose fin clip.” All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures.

**DATES:** Modification in the recreational fishery from Leadbetter Point, WA to Cape Falcon, OR is effective 001 hours local time (l.t.) Friday, September 17, 2005, until the next scheduled open period, which will be announced in a

future publication in the **Federal Register**.

Comments will be accepted through December 13, 2005.

**ADDRESSES:** Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the [2005salmonIA10.nwr@noaa.gov](mailto:2005salmonIA10.nwr@noaa.gov) address, or through the internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments, and include [050426117–5117–01 and/or I.D. 110905E] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of