

§ 256.93 How is the bonus or royalty credit allocated among multiple lease owners?

The MMS will allocate the bonus or royalty credit for an exchanged lease to the current record title interest owners in the same percentage share as each owner has in the lease as of the date of the request to exchange the lease.

§ 256.94 How may I use the bonus or royalty credit?

(a) You may use a credit issued under this part in lieu of a monetary payment due under any lease in the Gulf of Mexico not subject to the revenue distribution provisions of section 8(g)(2) of the OCSLA (43 U.S.C. 1337(g)(2)) for either:

(1) A bonus for acquisition of an interest in a new lease; or

(2) Royalty due on oil and gas production after October 14, 2008.

(b) You may not use a bonus or royalty credit in lieu of delivering oil or gas taken as royalty-in-kind.

(c) If you have any credit that remains unused after 5 years from the date MMS issued the credit, MMS reserves the right to apply the remaining credit to any of your obligations.

§ 256.95 How do I transfer a bonus or royalty credit to another person?

(a) You may transfer your bonus or royalty credit to any other person by submitting to the MMS Adjudication Unit for the Gulf of Mexico two originally executed transfer letters of agreement.

(b) Authorized officers indicated on the qualification card filed with MMS of all companies involved in transferring and receiving the credit must sign the transfer letters of agreement.

(c) A transfer letter of agreement must include:

(1) The effective date of the transfer,

(2) The OCS-G number for the lease that originally qualified for the credit,

(3) The amount of the credit being transferred,

(4) Company names punctuated exactly as filed on the qualification card at MMS, and

(5) A corporate seal, if you used a corporate seal in your initial qualification to hold OCS leases.

(d) The transferee of a credit transferred under this section may use it in accordance with § 256.94 as soon as MMS sends a confirmation of the transfer to the transferee.

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DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 934**

[SATS No: ND-050-FOR; Docket ID No. OSM-2008-0004]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an 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 minor revisions to its rules concerning self-bonding requirements, and updating terminology used for describing native grasslands, and correcting a cross reference error. North Dakota intended to revise its program to clarify ambiguities and improve operational efficiency.

DATES: *Effective Date:* September 12, 2008.

FOR FURTHER INFORMATION CONTACT:

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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 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, and 934.30.

II. Submission of the Proposed Amendment

By letter dated March 12, 2008, North Dakota sent us an amendment to its program (North Dakota Amendment number XXXVII, SATS No. ND-050-FOR, Administrative Record No. ND-LL-01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative.

We announced receipt of the proposed amendment in the April 18, 2008, **Federal Register** (73 FR 21087). 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 May 5, 2008. We received a "no inconsistency with this agency's regulations" comment from the U.S. Department of Labor's Mine Safety and Health Administration (MSHA), "no comments" from the State Historical Society of North Dakota (SHPO), and a "we agree" comment from the North Dakota State University Extension Service (NDSU Extension Service).

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 Rules

1. North Dakota proposed a cross-reference change under its previously approved permit approval criteria Rule NDAC 69-05.2-10-03. The cross-reference is being changed from Section 69-05.2-04-01 to Section 69-05.2-04-01.1 and is due to a Rule numbering revision that was made several years ago when some new rules were adopted by North Dakota.

2. In NDAC 69-05.2-08-08, (pre-mine land use and vegetation data requirements), North Dakota proposed to update the terminology used to describe native grasslands to reflect the terminology now used by USDA's Natural Resource Conservation Service (NRCS).

Because these changes are minor, we find that they will not make North

Dakota's rules 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

Additional language is proposed to North Dakota's coal regulations at NDAC 69-05.2-12-05.1 to allow the North Dakota Public Service Commission to accept bond ratings from other nationally recognized organizations, in addition to Moody's Investors Service and Standard and Poor's Corporation, for companies that guarantee self-bonds. A mining company requested this change to include credit rating agencies that have been defined by the United States Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO). Such a designation by the SEC is permitted for use for certain regulatory purposes. Currently there are several NRSROs, and the top three by market share are Moody's Investors Service, Standard and Poor's Corporation and Fitch Ratings. The proposed rule recognizes the fact that, since the self-bonding rules were originally enacted, various other (in addition to the aforementioned) rating organizations with strong credentials are now available and are being widely used by both business and government. The utilization of NRSROs provides for reliance upon SEC's expertise to ensure that any ratings agency is not only credible and reliable, but utilizes what has become a market-based standard for ratings organizations.

The Federal self-bonding regulations at 30 CFR 800.23(b)(3)(i) require that an applicant for a self-bond have a "current rating for its most recent bond issuance of 'A' or higher as issued by either Moody's Investors Service or Standard and Poor's Corporation."

On September 29, 2006, the President signed the Credit Rating Agency Reform Act of 2006 into law (Pub. L. 109-291, 16 Stat. 1327). The new law authorized the SEC to implement registration, recordkeeping, financial reporting and oversight rules with respect to NRSROs. On May 23, 2007, the SEC adopted final regulations implementing the new law. Prior to adoption of the new rules, the SEC recognized seven (7) NRSROs: Moody's Investors Service; Standard and Poor's Rating Services; Fitch, Inc.; A.M. Best Co., Inc.; DBRS (Dominion Bond Rating Service Limited); Japan Credit Rating Agency, Ltd.; and Rating and Investment Information, Inc. On June 28, 2007, the SEC announced that those firms would continue to be

recognized as NRSROs while the SEC processed their registration applications.

One of the purposes of the Credit Agency Reform Act of 2006 was to open up the credit rating industry to competition. Therefore, the rationale behind OSM's 1983 rules requiring use of either Moody's or Standard and Poor's is no longer valid or appropriate. Accordingly, we find that North Dakota's proposed rule change is consistent with the Credit Rating Agency Reform Act of 2006 and its implementing regulations and that its adoption will not make North Dakota's rules less effective than the corresponding Federal regulations at 30 CFR 800.23(b)(3)(i).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. ND-LL-06), and on April 11, 2008 we received a comment from the North Dakota State University Extension Service that it "is in full agreement with North Dakota State Program Amendment XXXVII from the North Dakota Public Service Commission" (Administrative Record Document ID No. ND-LL-05).

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 North Dakota's program (Administrative Record Document ID No. ND-LL-03).

The Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor responded on May 2, 2008, that "none of the changes to the state regulations involve miners'/ employees' health and safety issues" and that "MSHA review has determined that there is no inconsistency with this Agency's regulations" (Administrative Record Document ID No. ND-LL-07).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from the EPA (Administrative Record Document ID No. ND-LL-03). The EPA did not respond to our request.

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 March 26, 2008, we requested comments on North Dakota's amendment (Administrative Record Document ID No. ND-LL-03). The SHPO responded on April 3, 2008, that "we have no comments" (Administrative Record Document ID No. ND-LL-04).

V. OSM's Decision

Based on the above findings, we approve North Dakota's March 12, 2008 amendment.

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 demonstrate that the State has the capacity 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 CFR 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) *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.

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: August 20, 2008.

Allen D. Klein,
Regional Director, Western Region.

■ 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.

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Original amendment submission date	Date of final publication	Citation/description
* * * * * March 12, 2008	* * * * * September 12, 2008	* * * * * NDAC 69–05.2–08–08; NDAC 69–05.2–10–03; NDAC 69–05.2–12–05.1.