

copy of the proposed rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

#### *Executive Order 12866*

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

#### *Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new reporting or recordkeeping requirements.

#### *Drafting Information*

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

#### **List of Subjects in 27 CFR Part 22**

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations (Government agencies), Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

#### **Authority and Issuance**

Accordingly, title 27, Code of Federal Regulations part 22 is amended as follows:

#### **PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL**

**Par. 1.** The authority citation for part 22 continues to read as follows:

**Authority:** 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

#### **§ 22.21 [Amended]**

**Par. 2.** Amend § 22.21(a) by removing the word “bonds” from the first sentence.

#### **§ 22.25 [Removed]**

**Par. 3.** Remove § 22.25.

#### **§ 22.26 [Redesignated]**

**Par. 4.** Redesignate § 22.26 as § 22.25.

#### **§ 22.27 [Redesignated]**

**Par. 5.** Redesignate § 22.27 as § 22.26.

#### **§ 22.43 [Amended]**

**Par. 6.** Amend § 22.43 by revising paragraphs (a)(2) and (b) to read as follows:

#### **§ 22.43 Exceptions to application requirements.**

(a) \* \* \*

(2) Applications, Form 5150.22, filed by applicants, where the appropriate ATF officer has determined that the waiver of such requirements does not pose any jeopardy to the revenue or a hindrance of the effective administration of this part.

(b) The waiver provided for in this section will terminate for a permittee, other than States or political subdivisions thereof or the District of Columbia, when the permittee files an application to amend the permit and the appropriate ATF officer determines that the conditions justifying the waiver no longer exist. In this case, the permittee will furnish the information in respect to the previously waived items, as provided in § 22.57(a)(2).

#### **§ 22.59 [Amended]**

**Par. 7.** Amend § 22.59 by removing the second sentence.

#### **§ 22.60 [Amended]**

**Par. 8.** Amend § 22.60 as follows:

- a. Remove paragraph (b);
- b. Redesignate paragraph (c) as paragraph (b); and
- c. Redesignate paragraph (d) as paragraph (c).

#### **§ 22.62 [Amended]**

**Par. 9.** Amend § 22.62 by removing the last sentence.

#### **§ 22.63 [Amended]**

**Par. 10.** Amend § 22.63 as follows:

- a. Remove the paragraph letter and title designation “(a) Permit”; and
- b. Remove paragraph (b).

#### **§ 22.68 [Amended]**

**Par. 11.** Amend § 22.68 as follows:

- a. Remove the paragraph letter and title designation “(a) Notice”; and
- b. Remove paragraph (b).

#### **Subpart E—[Removed and Reserved]**

**Par. 12.** Remove and reserve Subpart E (Bonds and Consent of Surety).

#### **§ 22.152 [Amended]**

**Par. 13.** Amend § 22.152 as follows:

- a. Remove paragraph (b); and
- b. Redesignate paragraph (c) as paragraph (b).

**Bradley A. Buckles,**

*Director.*

Approved: February 1, 2001.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 01–5130 Filed 3–1–01; 8:45 am]

**BILLING CODE 4810–31–P**

#### **DEPARTMENT OF THE INTERIOR**

#### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 934**

[SPATS No. ND–041–FOR, Amendment No. XXX]

#### **North Dakota Regulatory Program**

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

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

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving this proposed amendment to the North Dakota regulatory program (hereinafter, the “North Dakota program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions to rules about rulemaking notices, prime farmland reclamation plans, permit approval and denial criteria, performance bond liability period, bond release applications, surface water monitoring, revegetation success standards, prime farmland reclamation standards, and small operator assistance.

The State intended to revise its program to be consistent with the corresponding Federal regulations and SMCRA, and improve operational efficiency.

**EFFECTIVE DATE:** March 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: 307/261–6550, Internet address: GPadgett@OSMRE.gov.

#### **SUPPLEMENTARY INFORMATION:**

- I. Background on the North Dakota Program
- 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 North Dakota Program**

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. 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 934.16.

II. Submission of the Proposed Amendment

By letter dated June 20, 2000, North Dakota sent us an amendment to its program (North Dakota Amendment No. XXX, administrative record No. ND-EE-01) under SMCRA (30 U.S.C. 1201 et seq.). North Dakota sent the amendment: (1) In response to a July 17, 1997 letter (administrative record No. ND-EE-02) that we sent to it in accordance with 30 CFR 732.17(c) and (2) to include changes made at its own initiative. The provisions of North Dakota's Administrative Code that North Dakota proposed to revise were: (1) NDAC 69-05.2-01-03, Rulemaking notices; (2) NDAC 69-05.2-09-15, Prime farmland reclamation plans; (3) NDAC 69-05.2-10-03.6.c, Permit approval or denial criteria; (4) NDAC 69-05.2-12-12.2, Bond release applications; (6) NDAC 69-05.2-16-05, Surface water monitoring; (7) NDAC 69-05.2-22-07.4.1, Revegetation success standards; (8) NDAC 69-05.2-26-05.3.h, Prime farmland revegetation requirements; and (9) NDAC 69-05.2-29-03, Small operator assistance.

We announced receipt of the proposed amendment in the July 17, 2000, Federal Register (65 FR 44015). 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-EE-05). We did not hold a public hearing or meeting because no one requested one.

III. Director'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.

1. Minor Revisions to North Dakota's Rules

North Dakota proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

A. Rulemaking Notices, NDAC 69-05.2-01-03; NDCC 28-32

There is no Federal counterpart to this rule change. It is being made because a recent legislative change in North Dakota's Administrative Procedures Act requires that notices of all rulemaking hearings be published in all official county newspapers in the State as well as filed with North Dakota's Legislative Council.

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

Dakota's rules less effective than the corresponding Federal regulations.

B. NDAC 69-05.2-12-09; NDAC 69-05.2-22-07.4.1: Period of Performance Bond Liability

Due to an oversight, the cross reference in NDAC Section 69-05.2-12-09(2) was not updated in North Dakota State Program Amendment XXIII as it should have been. This change, which adds reference to subsection k, corrects that oversight. There is no Federal counterpart.

C. NDAC 69-05.2-16-05, Performance Standards—Hydrologic Balance—Surface Water Monitoring

A cross reference is corrected to read in "subparagraph 2 of this" subdivision (instead of subparagraph c). The revision only involves a change to a cross reference.

2. Revisions to North Dakota's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

North Dakota proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

A. NDAC 69-05.2-10-03.6.c, Permit Applications—Criteria for Permit Approval or Denial

The proposed revised State rule adds two new paragraphs as requested by OSM in a July 17, 1997, 30 CFR 732(d) letter to North Dakota. As enumerated in that letter (administrative record No. ND-EE-02) the State needed to add counterparts to the Federal regulations at 30 CFR 785.17(e)(3) and (5). Paragraph "(3)" addresses the applicant's technological capability to restore prime farmland within a reasonable amount of time, and Paragraph "(5)" addresses total prime farmland acreage as it relates to postmining water bodies that are part of the reclamation.

The State of North Dakota is adding new language at 69-05.2-10-03.6.c, Permit applications—Criteria for permit approval or denial. It states that:

\* \* \* \* \*

"6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38.14.1-21, no permit or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:

c. The applicant has, with respect to prime farmland, obtained either a negative

determination or if the permit area contains prime farmlands:

4. The permit demonstrates that the applicant has the technological capability to restore prime farmland, within a reasonable time, to equivalent or higher yields as non-mined prime farmland in the surrounding area under equivalent management practices.

5. The aggregate total prime farmland acreage will not be decreased from that which existed prior to mining based on the cooperative soil survey. Any postmining water bodies that are part of the reclamation must be located within the non-prime farmland portions of the permit area. If any such water bodies reduce the amount of prime farmland that a surface owner had before mining, the affected surface owners must consent to the creation of the water bodies and the plans must be approved by the commission."

Federal Regulations at 30 CFR 785.17(e), Issuance of permit, require that "[a] permit for the mining and reclamation of prime farmland may be granted by the regulatory authority, if it first finds, in writing, upon the basis of a complete application, that—

\* \* \* \* \*

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and (5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained."

\* \* \* \* \*

The proposed language is almost identical to the Federal language and is therefore consistent with and no less effective than the Federal regulations.

B. NDAC 69-05.2-12-12.2, 30 CFR 800.40(a)(3), Release of Performance Bond—Bond Release Application

The existing State regulation at NDAC 69-05.2-12-09 does not require a permittee to submit a notarized statement certifying that the permittee accomplished reclamation in accordance with the North Dakota statute, regulatory program, and the approved reclamation plan.

The counterpart Federal regulation at 30 CFR 800.40(a)(3) requires the permittee to include in its application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the Act, the regulatory program, and the approved reclamation plan.

To satisfy OSM's requirement that North Dakota's regulatory program be revised to be consistent with revised Federal regulations at 30 CFR 800.40(a)(3), North Dakota is proposing to revise its regulations to require that each application for bond release submitted by the permittee include, in an application for any bond release, a notarized statement which certifies that the permittee has accomplished all applicable reclamation activities in accordance with NDAC 69-05.2, NDCC 38-14.1 and the approved reclamation plan.

The proposed revision is consistent with and no less effective than the Federal regulations.

#### C. NDAC 69-05.2-29-03. Small Operator Assistance—Eligibility for Assistance

The existing State regulation at NDAC 69-05.2-29-03(2)(c) provides for a minimum five percent ownership of the coal by an applicant for Small Operator Assistance. However, Federal regulations at 30 CFR 795.6(a)(2)(i) and (ii) require that an applicant own at least ten percent of the coal in order to qualify as an applicant.

Through this revision in its regulations, North Dakota will now also require a minimum ten percent ownership in the coal before allowing the use of subsidies from the Federal government to conduct the studies necessary in order to obtain a permit to mine coal.

The proposed revision is consistent with and no less effective than the Federal regulations.

#### 3. NDAC 69-05.2-09.15.8, 69-05.2-26-05.3.h, 69-05.2-22-07.4.1; Prime Farmland Reclamation Plans and Revegetation Requirements

The State of North Dakota is adding new language at 69-05.2-09-15, Permit applications—Operation and reclamation plans—Prime farmlands. It states that “[i]f appropriate, the applicant shall submit a mining and restoration plan for prime farmland containing:

\* \* \* \* \*

8. If a reclaimed cropland tract will contain a mixture of prime and non-prime farmlands and Commission approval of a single yield standard for the entire tract is requested as allowed by subdivision 1 of subsection 4 of section 69-05.2-22-07, a detailed description and comparison of the soil mapping units and acreages occurring in the prime and non-prime parcels must be provided.

North Dakota is also adding new language at 69-05.2-26-05.3, Performance standards—Prime

farmland—Revegetation and restoration of productivity. It states that “[t]he following revegetation requirements must be met for areas being returned to prime farmland after mining:

\* \* \* \* \*

3. Prime farmland productivity must be restored in accordance with the following:

h. If a reclaimed tract contains a mixture of prime and non-prime farmlands, the commission may approve a single yield standard for the entire tract as allowed under subdivision 1 of subsection 4 of section 69-05.2-22-07.

Proposed North Dakota regulation at NDAC 69-05.2-22-07.1 requires “[a]s an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and non-prime farmlands. If a reclaimed tract contains a mixture of prime and non-prime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and non-prime areas prior to mining. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.”

Federal regulations at 30 CFR 823.15(b) require that prime farmland soil productivity shall be restored in accordance with the following provisions:

\* \* \* \* \*

(2) Soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under Paragraph (b)(6) of this Section. A statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the regulatory authority in consultation with the U.S. Soil Conservation Service.

(3) The measurement period for determining average annual crop production (yield) shall be a minimum of 3 crop years prior to release of the operator's performance bond.

(5) Restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or

exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

In discussing the new language North Dakota indicates that the rules being proposed pertain to proving reclamation success on reclaimed cropland tracts that contain a mixture of prime and non-prime farmland. The additional language will allow the North Dakota Public Service Commission to approve a single yield standard for such tracts, rather than applying separate yield standards to the prime and non-prime farmland parcels. In western North Dakota, soils that are designated as prime farmland by the Natural Resource Conservation Service (NRCS) primarily occur in swale or nearly level landscape positions that receive runoff from adjoining areas. During the reclamation process the topsoil materials from the prime farmland areas are replaced in similar landscape positions and these prime areas are usually intermingled with non-prime areas. Although both prime and non-prime cropland must be restored to premine productivity levels, a separate yield standard must be developed for the reclaimed prime farmlands under the current rules and the prime areas must be harvested separately from the non-prime areas. The intermingling of the prime and non-prime areas throughout a larger field makes separate harvesting difficult. It is much easier to harvest the field as a single unit. The proposal will allow the Commission to approve a single yield standard in these situations. Prior to approval, a detailed comparison of the premine soils occurring in the prime and non-prime areas would have to be included in the reclamation plan as discussed in item 2 above. At least three years of production data, starting no sooner than the sixth year of the liability period, would be required to demonstrate reclamation success. Also, one of those three years would have to be the last year of the liability period.

OSM believes that the proposed use of the single yield standard is appropriate because it ensures that the productivity of the reclaimed tract, based on both the productivity of the prime and non-prime soils, is restored to premine levels. This ensures that a tract is returned to a land owner with the same capability it had prior to mining.

As required under 30 CFR 823.15(b)(2) North Dakota has provided documentation that it has consulted with the NRCS on the use of a single production standard based on the weighted averages of prime and non-

prime soils within a given tract. In a letter dated April 11, 2000 to the State the NRCS concurred with North Dakota's proposal. OSM also concurs. This satisfies the requirements of 30 CFR 823.15(b)(2).

The proposed amendment is consistent with and no less effective than the Federal regulations.

#### 4. NDAC 69-05.22-07.4.1, Performance Standards—Revegetation—Standards for Success

Existing NDAC 69-05.2-22-07.4.1. allows “[a]s an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for three out of five consecutive years starting no sooner than the eighth year of the responsibility period. This alternative does not pertain to success standards for prime farmlands.”

Proposed NDAC 69-05.2-22-07.4.1. provides “[a]s an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and non-prime farmlands. If a reclaimed tract contains a mixture of prime and non-prime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and non-prime areas prior to mining. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period. If this option is approved, the operator must also meet the applicable requirements of section 69-5.2-26-05 for the entire tract.”

The Federal regulations at 30 CFR 816.116(c)(3) require that in areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than: (i) Ten full years, except as provided in paragraph (c)(3)(ii). Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

The new provision will allow mining companies to use data from any three of the last five years of the responsibility period, starting in year six, to prove reclamation success. However, one year of these three years must be the last year of the responsibility period. This language will give the mining companies more flexibility in using vegetation data collected during a number of years near the end of the revegetation liability period without extending the period of extended responsibility beyond the 10 years envisioned at Section 515(b)(20) of SMCRA.

On September 7, 1988 OSM revised 30 CFR 816.116(c)(2) to require that in areas with more than 26 inches of average annual precipitation the vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standards for during the growing season of any 2 years of the five year responsibility period, except the first year. This change eliminated the requirement to measure revegetation success during the last two years of the responsibility period in areas with more than 26 inches of average annual precipitation. In the September 7, 1988, preamble to this regulation change OSM, in discussing the reasons for the change, states that measurements in nonconsecutive years avoids unduly penalizing the operator for the negative effects of climatic variability (53 FR 34636, 24640). OSM goes on to state that it continues to believe that measurement over two years is important to attenuate the influences of climatic variability, but now realizes that consecutiveness imposes an unnecessary degree of regulatory rigidity. Under a system requiring measurement of revegetation success in two consecutive years, an operator would be unnecessarily penalized if bad weather in the second year of the measurement period caused failure to meet the revegetation success standard after it had been achieved in the first year.

While no changes were made to 30 CFR 816.116(c)(3) at the time 30 CFR 816.116(c)(2) was changed OSM believes that the same problems with climatic variability discussed in the above referenced preamble are applicable to areas that receive 26 inches or less average annual precipitation. As discussed in the previous approval allowing the use of data from any three of the last five years of the responsibility period, starting in year eight in North Dakota (64 FR 12896, 12898, March 16, 1999, administrative record No. ND-Z-17),

climatic factors such as hail or drought can reduce yields resulting in failure to meet revegetation success standards in consecutive years. Localized insect infestations, such as grasshoppers or cutworms, can have the same effect. North Dakota's proposal, which provides the operators the option to demonstrate revegetation success during any three years beginning in year six, gives operators the same level of flexibility provided under 30 CFR 816.116(c)(2). However, it limits evaluation of revegetation success to starting no sooner than the sixth year of the responsibility period. This ensures that only well established plant communities or croplands are evaluated and only in the final years of the responsibility period. The proposal minimizes any potential impacts augmentative practices, such as fertilization or irrigation, might have on the reestablished plant communities. Finally, the proposed rule requires three years of data to demonstrate revegetation success, which is more than required by the Federal regulations. It also requires that one year be the last year of the responsibility period. This ensures that evaluation of revegetation success can never be completed before year 10 of the responsibility period.

For the reasons cited above OSM has determined that, for evaluating revegetation success, data from any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period is no less effective than the Federal regulations and achieves the requirements of sections 515(b)(19) and (b)(20) of SMCRA.

#### IV. Summary and Disposition of Comments

##### Public Comments

We asked for public comments on the amendment (administrative record No. ND-EE-04), but did not receive any.

##### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), 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-EE-04).

On August 2, 2000, the U.S. Fish and Wildlife Service commented (administrative record No. ND-EE-06) that “I do not anticipate any significant impacts to fish and wildlife resources as a result of the proposed amendment.”

On August 4, 2000, the U.S. Natural Resources Conservation Service

commented (administrative record No. ND-EE-07) that “we do not have any further comments at this time.”

Also on August 4, 2000, the Agricultural Research Service commented that “we see no problems with the proposed changes.”

On August 23, 2000, the U.S. Army Corps of Engineers commented (administrative record ND-EE-09) that although it found the proposed amendment “generally satisfactory \* \* \*, in order to avoid any inadvertent implication that the requirements of Section 404 of the Clean Water Act are somehow superseded by this amendment, we suggest the inclusion of a statement indicating that separate authorization from the U.S. Army Corps of Engineers (COE) is required for all work involving any discharge of dredged or fill material into waters of the United States.”

We have considered this comment and believe it unlikely that anyone would think that the amendment would supersede Section 404 of the Clean Water Act and therefore decided not to include the statement suggested by the COE.

#### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (administrative record No. ND-EE-04). EPA did not respond to our request.

#### *State Historic Preservation Office (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 July 7, 2000, we requested comments on North Dakota’s amendment (administrative record No. ND-EE-01), but neither responded to our request.

#### **V. Director’s Decision**

We approve, as discussed in: Finding No. 1.A NADAC 69-05.2-01-03, NDCC 28-32, concerning rulemaking notices; finding No. 1B, NDAC 69-05.2-12-09 and NDAC 69-05.2-22-07.4.1, concerning period of performance bond liability; finding No. 1C, NDAC 69-05.2-16-05, concerning hydrologic balance performance standards for surface water monitoring; finding No. 2A, NDAC 69-05.2-10-03.6.c concerning criteria for approval or denial in permit applications; finding No. 2B, NDAC 69-05.2-12-12.2, concerning the release of the performance bond; finding No. 2C,

NDAC 69-05.2-29-03, concerning the eligibility for assistance by small operators; finding No. 3, NDAC 69-05.2-09.15.8, NDAC 69-05.2-26-05.3.h, and NDAC 69-05.2-22-07.4.1 concerning prime farmland reclamation plans and revegetation requirements; and finding No. 4, NDAC 69-05.2-22-07.4.1, concerning revegetation success standards.

To implement this decision, we are amending the Federal regulations at 30 CFR part 934, which codify decisions concerning the North Dakota program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage States to make their programs conform with the Federal standards. SMCRA requires consistency of State and Federal standards.

#### **VI. Procedural Determinations**

##### *1. 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).

##### *2. Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *3. 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.

##### *4. Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) 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 since each such 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.

##### *5. 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)).

##### *6. 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.*).

##### *7. Regulatory Flexibility Act*

The Department of the Interior has determined 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 that 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. 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.

##### *8. 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.

9. *Unfunded Mandates*

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million

or more in any given year on any local, State, or Tribal governments or private entities.

**List of Subjects in 30 CFR Part 934**

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 8, 2001.

**Brent Wahlquist,**  
*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
June 20, 2000	March 2, 2001	NDAC 69-05.2-01-03; NDCC 28-32 NDAC 69-05.2-09.15.8 NDAC 69-05.2-10-03.6.c NDAC 69-05.2-12-09 NDAC 69-05.2-12-12.2 NDAC 69-05.2-16-05 NDAC 69-05.2-22-07.4.1 NDAC 69-05.2-26-05.3 NDAC 69-05.2-29-03

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 410, 412, 413, and 485**

[HCFA-1118-CN2]

RIN 0938-AK09

**Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2001 Rates; Midyear Corrections Effective**

December 1, 2000.

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule; correction notice.

**SUMMARY:** In the August 1, 2000 issue of the **Federal Register** (65 FR 47054), we published a final rule that revised the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system.

This document corrects wage index and related data errors identified after October 1, 2000.

**EFFECTIVE DATE:** December 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Anne Tayloe, (410) 786-4546.

**SUPPLEMENTARY INFORMATION:** This document corrects a limited number of errors in the August 1, 2000 final rule (65 FR 47054) identified after October 1, 2000. We are making these changes in accordance with 42 CFR 412.63(x)(2)(i), which specifies that we may make midyear corrections to the wage index for an area only if a hospital can show that—

- The intermediary or HCFA made an error in tabulating the hospital’s data; and
- The hospital could not have known about the error or did not have the opportunity to correct the error, before the beginning of the Federal fiscal year (in this case before the beginning of FY 2001). In addition, § 412.63(x)(2)(ii) specifies that midyear corrections are effective prospectively from the date that the change is made to the wage index. On December 1, 2000, we issued a program memorandum entitled “Corrections to the Calculation of

Federal Fiscal Year (FY) 2001 Inpatient Payment Amounts” that made midyear corrections to the wage index (HCFA Pub. 60 A). This program memorandum included the midyear corrections presented in this notice; therefore, the effective date is the same as that of the program memorandum (December 1, 2000). The midyear corrections are as follows:

1. On page 47138, in Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1999; Hospital Average Hourly Wages for Federal Fiscal Year 2001 Wage Index, the average hourly wage for the specified provider is corrected to read as follows:

Provider	Case mix index	Average hourly wage
260027	1.6845	21.30

2. On pages 47149 through 47156, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, the wage indexes and GAFs for the specified urban areas are corrected to read as follows:

	Urban area (constituent counties)	Wage index	GAF
0870	Benton Harbor, MI <sup>2</sup>	0.9003	0.9306
3080	Green Bay, WI	0.9339	0.9542
3640	Jersey City, NJ	1.1318	1.0885
3660	Johnson City-Kingsport-Bristol, TN-VA	0.8318	0.8815
3760	Kansas City, KS-MO <sup>1</sup>	0.9527	0.9674
5640	Newark, NJ <sup>1</sup>	1.0890	1.0601