

(ii) *Conclusion.* The grant made on January 1, 2005, is treated as 100 shares until the determination date in 2008. The grant made on March 1, 2005, is not taken into account until the 2006 determination date and its present value on that date, along with the then present value of the grant made on December 31, 2005, is treated as a number of shares that are based on the \$8 per share value on the 2006 determination date, with the resulting number of shares continuing to apply until the determination date in 2008. On the January 1, 2008, determination date, the grant made on the preceding day is taken into account at its present value of \$3,000 on January 1, 2008 and the \$15 per share value on that date with the resulting number of shares (200) continuing to apply until the next determination date. In addition, on the January 1, 2008, determination date, the number of shares determined under other grants made between January 1, 2005 and December 31, 2007, must be revalued. Accordingly, the aggregate value of all nonqualified deferred compensation granted during that period is determined to be \$3750 on January 1, 2008, and the corresponding number of shares of synthetic equity based on the \$15 per share value is determined to be 250 shares on the 2008 determination date, with the resulting aggregate number of shares (450) continuing to apply until the determination date in 2011. On the January 1, 2011, determination date, the aggregate value of all nonqualified deferred compensation is determined to be \$7,600 and the corresponding number of shares of synthetic equity based on the \$20 per share value on the 2011 determination date is determined to be 380 shares (with the resulting number of shares continuing to apply until the day before the determination date in 2014, assuming no further grants are made).

(i) *Effective dates—(1) Statutory effective date.* (i) Except as otherwise provided in paragraph (i)(1)(ii) of this section, section 409(p) applies for plan years ending after March 14, 2001.

(ii) If an ESOP holding stock in an S corporation was established on or before March 14, 2001, and the election under section 1362(a) with respect to that S corporation was in effect on March 14, 2001, section 409(p) applies for plan years beginning on or after January 1, 2005.

(2) *Regulatory effective date.* This section applies for plan years beginning on or after January 1, 2006. For plan years beginning before January 1, 2006, § 1.409(p)-1T (as it appeared in the

April 1, 2005, edition of 26 CFR part 1) applies.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 30, 2006.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E6-21669 Filed 12-19-06; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

[SATS No. ND-049-FOR, Amendment No. XXXVI]

#### 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).

**DATES:** *Effective Date:* December 20, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jeff Fleischman, Telephone: 307/261-6550, E-mail address: [JFleischman@osmre.gov](mailto:JFleischman@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 934.10, 934.12, 934.13, 934.15 and 934.30.

#### II. Submission of the Proposed Amendment

By letter dated May 24, 2006, North Dakota sent us an amendment to its program (Amendment number XXXVI, Administrative Record No. ND-KK-01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise are: Rules about data requirements for proving reclamation success, and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. Other changes are minor, including provisions that relate to lease documents in mining permits; newspaper notices for permit applications; copies of advertisements and other information needed for bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and correcting a cross reference error in a rule on roads. With these minor changes, North Dakota proposes to revise its program to improve operational efficiency. Specifically, North Dakota proposes to:

Add language to NDAC 69-05.2-06-03 (right-of-entry requirements) to allow a permittee to delete coal leases from the permit when mining on a tract covered by a lease is completed and the lease is no longer needed to show a right-of-entry. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee the right of entry must be added to the permit.

Delete language to NDAC 69-05.2-10-01 that required the newspaper notice for permit applications include a reference to the U.S. Geological Survey map that contains the area; and add language that limits the listing of coal owners in the notice to those that will be affected by the mining activities.

Revise the bond release application requirements in North Dakota’s coal rules at NDAC 69-05.2-12-12 to require the filing of a copy of the newspaper advertisement instead of requiring the submittal of affidavits of publication.

Revise sedimentation pond inspection requirements in North Dakota's coal rules at NDAC 69-05.2-16-09 to make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by a registered professional engineer.

Revise revegetation success standards at NDAC 69-05.2-22-07 to allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language was also proposed for woodland and shelterbelt standards that addresses the replanting of trees and shrubs during the liability period and to allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. Finally, the North Dakota alternative to meeting the revegetation success standards for the last two consecutive growing seasons of the responsibility period was abolished.

Revise the coal rules to correct a reference to the road performance standards at NDAC 69-05.2-24-01.

We announced receipt of the proposed amendment in the July 31, 2006, **Federal Register** (71 FR 43085). 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-KK-04).

We did not receive any comments. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 30, 2006.

### 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, as described below.

#### A. Minor Revisions to North Dakota's Rules

North Dakota proposed minor changes to the following previously-approved rules:

NDAC 69-05.2-24-01, Performance Standards—Roads—General requirements.

NDAC 69-05.2-10-01(3) and (4), Permit applications—public notices of filing.

Because these changes are minor, we find that they will not make North Dakota's coal rules less effective than the corresponding Federal regulations.

#### B. Revisions to North Dakota's Rules Containing Language That Is the Same as or Similar to Corresponding Provisions of the Federal Regulations

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

NDAC 69-05.2-22-07 (30 CFR 817.116), Revegetation—Standards for Success.

Because this proposed rule contains language that is the same as or similar to the corresponding Federal regulations, we find it is no less effective than the corresponding Federal regulations.

#### C. Revisions to North Dakota's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. NDAC 69-05.2-16-09.(19). Performance Standards—Hydrologic Balance—Sedimentation Ponds—Inspections

The proposed changes to North Dakota's rules on impoundment inspections are being made to clarify the inspection requirements that apply when ponds are being constructed, the requirements for certification by a registered professional engineer following construction, and the requirements for inspections by a registered professional engineer.

Because North Dakota's proposed rule is nearly identical and substantively similar to the corresponding Federal regulations at 30 CFR 816.49(a)(11)(ii) we find that it is no less effective than the corresponding Federal regulation.

2. NDAC 69-05.2-12-12. Release of Performance Bond—Bond Release Application

North Dakota proposed two changes to this rule involving bond release. The first involves the requirement to submit "proof of publication" of the announcement of the application for bond release.

Instead, North Dakota proposes that permittees will be required to submit a "copy of the newspaper advertisement that was published." This change is no less effective than the Federal rule at 30 CFR 800.40(a)(2) which requires submission of a copy of the newspaper advertisement within 30 days after an application for bond release has been filed with the regulatory authority.

The second change to this rule is a simple cross-reference to another North Dakota provision that enumerates the additional information that permittees must include in their application when a premine water delivery system will not be replaced. This provision is not found in the Federal rules but is consistent with them.

#### D. Revisions to North Dakota's Rules With No Corresponding Federal Regulations

NDAC 69-05.2-06-03. Permit Applications—Right of Entry and Operation Information

This addition to North Dakota's rules does not have a Federal counterpart. It simply requires the permit applicant to submit certified copies of documents showing the right-to-mine or to otherwise disturb the surface of lands within the proposed permit area. It is more stringent than the Federal rules since the Federal rules have no such requirement.

### IV. Summary and Disposition of Comments

#### Public Comments

We asked for public comments on the amendment (Administrative Record No. ND-KK-03), but did not receive any.

#### 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-KK-03). We did not receive any.

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

We note that none of the proposed changes relate to air or water quality standards. Nevertheless, under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. ND-KK-03). 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 June 1, 2006, we requested comments on North Dakota's amendment (Administrative Record No. ND-KK-03), but neither responded to our request.

#### V. OSM's Decision

Based on the above findings we approve North Dakota's May 24, 2006, 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 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 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: November 22, 2006.

**Allen D. Klein,**  
*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**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
May 24, 2006	December 20, 2006	NDAC 69–05.2–06–03 NDAC 69–05.2–10–01 NDAC 69–05.2–12–12 NDAC 69–05.2–16–09 NDAC 69–05.2–22–07 NDAC 69–05.2–24–01

[FR Doc. E6–21716 Filed 12–19–06; 8:45 am]  
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**DEPARTMENT OF THE TREASURY**

**Monetary Offices**

**31 CFR Part 82**

**Prohibition on the Exportation, Melting, or Treatment of 5-Cent and One-Cent Coins**

**AGENCY:** United States Mint, Treasury.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** To protect the coinage of the United States, this interim rule prohibits the exportation, melting, and treatment of 5-cent and one-cent coins. This interim rule is issued pursuant to 31 U.S.C. 5111(d), which authorizes the Secretary of the Treasury to prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States. This interim rule is effective until April 14, 2007. The public is invited to comment until January 14, 2007. Thereafter, but prior to April 14, 2007, the Department of the Treasury will reevaluate the need for the rule in light of the public comments, and other relevant factors. Upon consideration of the public comments and other relevant factors, the Department of the Treasury may issue a final rule extending or modifying

the provisions of this interim rule, or may allow the interim rule to expire without extension.

**DATES:** *Effective Date:* This interim rule is effective December 20, 2006 through April 14, 2007.

*Expiration Date:* Unless extended by a further rulemaking document published in the **Federal Register**, this interim rule expires April 14, 2007.

*Comment Due Date:* January 19, 2007.

**ADDRESSES:** Send written comments to Daniel P. Shaver, Chief Counsel, Office of Chief Counsel, United States Mint, 801 9th Street, NW., Washington DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Kristie Bowers, Attorney-Advisor, United States Mint at (202) 354–7631 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 5111(d) of title 31, United States Code, authorizes the Secretary of the Treasury to prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States. In enacting 31 U.S.C. 5111(d), Congress has conferred upon the Secretary of the Treasury broad discretion to ensure that he can effectively carry out his statutory duties to protect the Nation’s coinage and to ensure that sufficient quantities of coins are in circulation to meet the needs of the United States. Pursuant to this authority, the Secretary of the Treasury

has determined that, to protect the coinage of the United States, it is necessary to generally prohibit the exportation, melting, or treatment of 5-cent and one-cent coins minted and issued by the United States. The Secretary has made this determination because the values of the metal contents of 5-cent and one-cent coins are in excess of their respective face values, raising the likelihood that these coins will be the subject of recycling and speculation. In fact, the Department has received anecdotal reports suggesting that this activity may already be occurring. The prohibitions contained in this interim rule apply only to 5-cent and one-cent coins.

The primary reason for limiting the melting, exportation, and treatment of 5-cent and one-cent coins is to avoid a shortage of these coins in circulation. Under 31 U.S.C. 5111(a)(1), the core responsibility of the Secretary of the Treasury with respect to the Nation’s coinage is to “mint and issue coins \* \* \* in amounts the Secretary decides are necessary to meet the needs of the United States.” In meeting the needs for low-value circulating coin denominations, the United States Mint estimates that it augments and replenishes only about four percent of the Nation’s 5-cent coin supply, and only about eight percent of the one-cent coin supply, each year. Accordingly, the extraction of even relatively small amounts of these coins from circulation could have a significant impact on the United States Mint’s ability to produce