U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding 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 corresponding Federal regulations.

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 local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 24, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
May 15, 1998	March 16, 1999	IC14–8–2–117.3, 14–34–4–18, 14–34–5–7(b) through (d), –8, –8.1, –8.2(1) through (3), –8.2(5)(A) through (5)(C), –8.3, –8.4(a) through (c)(1),–8.4(c)(2)(A) through (J) and (L), –8.5,–8.6.

3. Section 914.17 is added to read as follows:

§ 914.17 State regulatory program provisions and amendments disapproved.

(a) The amendment at Indiana Code 14–34–5–7(a) submitted on May 14, 1998, concerning permit revisions is hereby disapproved effective March 16, 1999.

(b) The amendment at Indiana Code 14–34–5–8.2(4) submitted by Indiana on May 14, 1998, concerning postmining land use changes is hereby disapproved effective March 16, 1999.

(c) The amendment at Indiana Code 14–34–5–8.4(c)(2)(K) submitted by Indiana on May 14, 1998, concerning minor field revisions of temporary cessation of mining is hereby disapproved effective March 16, 1999.

[FR Doc. 99–6350 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–035–FOR, Amendment No. XXV]

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 a 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 pertaining to a proposal to eliminate the requirement for companies to submit a copy of the Federal Coal Production and Reclamation Fee Report, changes to revegetation success standards, and a new rule on inspection frequency for inactive mines. The amendment revised the State program to improve operational efficiency.

EFFECTIVE DATE: March 16, 1999.

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

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated August 29, 1997, North Dakota submitted a proposed amendment to its program (Amendment No. XXV, administrative record No. ND–Z–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise were: NDAC 69–05.2–13–01, concerning its coal production and reclamation fee report; NDAC 69–05.2–22–07, concerning revegetation success standards; and the addition of NDAC 69–05.2–28–18, concerning inspections of inactive surface coal mining operations.

OSM announced receipt of the proposed amendment in the September 17, 1997 **Federal Register** (62 FR 48807), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–Z–13). The public comment period ended at 4 p.m., m.d.t. on October 17, 1997.

During its review of the amendment, OSM identified concerns with NDAC 69–05.2–22–07.4.1, pertaining to the time frame for demonstrating revegetation success. OSM notified North Dakota of the concerns in a telephone conversation on March 11,

1998 (administrative record No. ND–Z–09).

North Dakota responded in a letter dated April 23, 1998, by submitting additional explanatory information pertaining to NDAC 69–05.2–22–07.4.1 (administrative record No. ND–Z–10).

Based upon the additional explanatory information for the proposed program amendment submitted by North Dakota, OSM reopened the public comment period in the June 17, 1998 **Federal Register** (63 FR 33022; administrative record No. ND–Z–12). The public comment period ended on July 2, 1998.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on August 29, 1997, and as supplemented with additional explanatory information on April 23, 1998, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. NDAC 69–05.2–13–01, Deletion of North Dakota's Requirement for Coal Production and Reclamation Fee Report

North Dakota proposed to delete at NDAC 69–05.2–13–01 the requirement that a copy of the Coal Production and Reclamation Fee Report (that is prepared by mining companies and submitted to OSM) also be furnished to the North Dakota Public Service Commission.

The Federal regulations at 30 CFR 870.15(c) requires, in part, that

> All operators who receive a Coal Sales and Reclamation Fee Report (Form OSM–1), including those with zero sales, uses or transfers, must submit a completed Form OSM–1, as well as any fee payment due [to OSM].

North Dakota stated that it proposed to delete NDAC 69–05.2–13–01 because there is no Federal regulation requiring it and the information contained in the report is readily available from OSM.

Because the Federal regulations do not require a State to mandate that an operator provide the State, as well as OSM, with a Form OSM–1, the Director finds that the proposed deletion of NDAC 69–05.2–13–01 is not inconsistent with the Federal regulations at 30 CFR 870.15(c). The Director approves this proposed revision.

2. NDAC 69–05.2–22–07.4.1, Time Frame for Demonstrating Reclamation Success

North Dakota proposed to add a new rule at NDAC 69–05.2–22–07.4.1, which states that as 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 in any three of five consecutive years starting no sooner than the eighth year of the responsibility period. North Dakota's proposed rule explicitly states that the alternative does not apply to demonstration of success on prime farmlands.

North Dakota submitted the following explanation for the proposed rule:

> 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. 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 eight, to provide reclamation success. Occasionally hail storms, insect damage, very localized droughts, or other factors cause reduced yields in the last year or two of the liability period. Under current rules this can result in the bond being held for at least two more years. For example, assume a mining company meets cropland yield standards during the eighth and ninth years of the ten year responsibility period and, during the tenth year, a hail storm destroys the crop on the reclaimed land. Under the present rule, the company could not use any of the data from the eighth and ninth years and would have to meet the standards in the eleventh and twelfth years before final bond release could be granted. However, under the new proposal, a company would be eligible for final bond release in the eleventh year if success standards are met that year. In this example, data from the eighth, ninth and eleventh years would be used to achieve reclamation success for three out of five consecutive years.

North Dakota also clearly stated that separate standards apply to reclaimed prime farmlands and that the new proposal would not affect those standards.

In response to an OSM concern that the proposal lacked sufficient justification for situations in which the revegetation success standard is a reference area, North Dakota submitted additional information on daily precipitation, climatology of hail, grasshopper biology and management, and reference area location. Use of reference areas generally involves direct annual comparison of vegetative cover and production between the reference area and the revegetated area. Reference areas are used, in part, to account for the impact of climatic variation on both undisturbed and reestablished plant communities in the vicinity of the mine. North Dakota's original supporting information failed to explain why reference areas, which are located close to the revegetated areas, would not experience the same climatic variability or insect damage as the revegetated areas.

North Dakota provided four reasons that the proposed amendment should be approved. First, the State has a semiarid climate where vegetative growth is highly dependent upon rainfall during the growing season. Precipitation records emphasize the localized nature of summer rainfall events and amounts. For example, on May 22, 1997, Beulah recorded 0.35 inch of rain, while Zap, located 7 miles away, received 0.57 inch. On July 11, 1997, Beulah received 1.50 inches while Zap received 2.60 inches. As another example, on June 23, 1997, Underwood received 0.73 inch, while Washburn, located 12 miles away, received 0.31 inch. On July 2, 1997, Underwood received 2.14 inches while Washburn received 3.07 inches. Precipitation for the entire month of May 1997 totaled 0.58 inch in Beulah, 0.97 inch in Zap, 1.02 inches in Underwood, and 0.58 in Washburn. Because rainfall is the major limiting factor in plant production in the Northern Great Plains, precipitation differences could result in significant corresponding variations in yield.

Second, much of the rainfall during the summer months in North Dakota occurs as thunderstorms that may contain hail. The size and areal distribution of the hailstones, in combination with the timing of the hailstorms, may substantially reduce yields or completely destroy a crop for a particular growing season. Hail damage can vary greatly over short distances. In a particular year, a hailstorm could destroy the crop on the reclaimed area without damaging the undisturbed reference area located a few miles away, or vice versa.

Hailstorms are associated with the localized convective storms that result in the variable precipitation amounts discussed above. In general, areas with the most rainfall events also have the most hail events. Of the hailstorms occurring in the coal mining regions of the state (Regions 3 and 4) between 1976 and 1986, 19–24 percent were severe or moderate. Both severe and moderate hailstorms are capable of damaging crop production. Further, the most damaging hail occurred during the months of July and August in Region 3 and June and July in Region 4, key periods for plant growth and crop ripening.

Third, pests, such as grasshoppers, may have differential impacts on lands only a few miles apart. Grasshopper survey information for North Dakota demonstrates that grasshopper infestations are highly erratic in distribution. In addition, North Dakota submitted a publication, *Grasshopper Biology and Management* (Phillip A. Glogoza and Michael J. Weiss, North Dakota State University Extension Service, 1997), stating that damage to small grains is generally concentrated near field margins where grasses tend to be seeded. This damage pattern may disproportionately impact reclaimed areas because only a part of the field must be cultivated to prove productivity, the areas cropped may be relatively narrow, and test plots are often surrounded by native or tame pastureland or hayland seeded with a grass-legume mixture. Conversely, the undisturbed reference area is frequently surrounded by other cropland and thus may experience relatively little grasshopper damage in comparison to the corresponding test plots in a reclaimed area.

Fourth, some mining companies in the State have difficulty locating suitable reference (or control) areas close to reclaimed lands. To find undisturbed areas with similar soils and topography, the mining companies may have to locate reference areas several miles away from the reclaimed areas. In addition, mining companies must use equivalent management practices on both reclaimed and reference areas. For this reason, the companies prefer to have the same person managing both the reclaimed and undisturbed areas, which can also affect the location of reference areas. The greater the distance between the reclaimed and reference areas, the greater the likelihood of differences in precipitation or pest damage, which may result in widely varying yields between the two areas in a given year. The State encourages companies to locate reference areas as close to reclaimed areas as possible. However, some of the North Dakota mines will disturb many thousands of acres in large blocks, which means that establishing a suitable undisturbed reference area nearby is not always possible. The distance between reclaimed areas and their corresponding reference areas sometimes exceeds 10 miles. OSM accepts North Dakota's rationale justifying its proposed alternative to the current method for determining revegetation success.

The Federal rules at 30 CFR 816.116(c)(3) require that revegetation success standards be met during the last two consecutive years of the 10-year revegetation responsibility period in areas in which the average annual precipitation is equal to or less than 26 inches. On September 7, 1988, OSM revised 30 CFR 816.116(c)(2) to provide that in areas with more than 26 inches of average annual precipitation the vegetation parameters identified in 30 CFR 816.116(b) for grazing land, pasture land, or cropland must equal to exceed the approved success standards during the growing seasons of any two years of the 5-year responsibility period, excluding 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.

North Dakota's proposal, which provides an option to demonstrate revegetation success using measurements from any three of five consecutive years, starting with the eighth years of the revegetation responsibility period, affords greater flexibility than 30 CFR 816.116(c)(3) but less flexibility than 30 CFR 816.116(c)(2). The amendment provides an additional safeguard by requiring that revegetation success standards be met during at least three years of the applicable portion of the revegetation responsibility period, rather than just two as in 30 CFR 816.116(c)(2) and (c)(3). Furthermore, it prohibits the inclusion of measurements taken during the first seven years of the responsibility period. Hence, like 30 CFR 816.116(c)(3), the North Dakota proposal requires that revegetation success standards be met during at least two years after the eighth year of the revegetation responsibility period. This restriction minimizes any potential impacts that augmentative practices, such as fertilization or irrigation, might have on the productivity and permanence of the reestablished plant communities.

For these reasons, the Director finds that the proposed North Dakota rule allowing the use of data from any three of the last five years of the responsibility period, starting in year eight, to demonstrate achievement of revegetation success is no less effective than the corresponding Federal regulation at 30 CFR 816.116(c)(3) in achieving the revegetation requirements of sections 515(b)(19) and (b)(20) of SMCRA.

3. NDAC 69–05.2–28–19, Inspection and Enforcement—Inspection of Inactive Surface Coal Mining Operations

a. *NDAC 69–05.2–28–19, Inspection Frequency.* North Dakota proposed at NDAC 69–05.2–28–19 one complete inspection per quarter and partial inspections as necessary. This proposed rule is substantially identical to the counterpart provisions in the Federal regulations at 30 CFR 840.11(a) and (b). Therefore the Director finds that NDAC 69–05.2–28–19 is no less effective than 30 CFR 840.11(a) and (b), and approves it.

b. *NDAC 69–05.2–28–19.1, Definition of Inactive Coal Mining Operations.* North Dakota proposed at NDAC 69–05.2–28–19.1 the first of two alternative definitions of inactive coal mining operations. Proposed NDAC 69–05.2–28–19.1 requires that surface coal mining operations have permanently ceased, and all disturbed areas have been reclaimed, and vegetation has been established in accordance with the approved reclamation plan, and the lands are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69–05.2–16–04. The Federal regulations at 30 CFR 840.11(f) state that an inactive surface coal mining and reclamation operation is one for which: (1) the State regulatory authority has secured from the permittee the written notice under 816.116(b) or 817.131(b) of this chapter for temporary cessation or (2) Reclamation Phase II or defined at 800.40 has been completed and liability of the permittee has been reduced by the State regulatory authority. The Federal regulations at 30 CFR 800.40(c)(2) require, prior to Phase II bond release (North Dakota's Third Stage bond release), vegetation establishment and no contributions of suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 515(b)(10) of SMCRA and by subchapter K.

With the exception that NDAC 69–05.2–28–19 does not (1) require that the liability of the permittee has been reduced by the regulatory authority (RA) or (2) provide a definition of inactive surface coal mining which requires a written notice from the permittee provided for under 30 CFR 816.131(b) or 817.131(b), the proposed rule is identical to the Federal regulation at 30 CFR 842.11(c)(2).

In a January 30, 1997 telephone conversation (administrative record No. ND–Z–15) between OSM and North Dakota, North Dakota provided the following four reasons for North Dakota's lack of a requirement that the liability of the permittee has been reduced by the RA for determining when a coal mining operation is inactive and therefore subject to fewer inspections:

1. OSM's approval of a similar Ohio program amendment that OSM approved on October 29, 1996 (Vol. 61, No. 210 FR 55748, 55749);

2. Monthly inspections of North Dakota's reclaimed mines where mining has ceased and vegetation has been established is a waste of time and resources, especially during North Dakota winters where reclaimed mine sites are covered with snow;

3. OSM allows a lesser frequency for inspections at mines that have temporarily ceased operations; and

4. North Dakota would verify via an inspection prior to the declaration of ''inactive'' that Phase III Reclamation (the same as Phase II under SMCRA) had been completed.

As North Dakota stated, OSM approved an amendment that allowed Ohio to deem a coal mining operation inactive when Phase II reclamation standards had been achieved that also deleted the requirement for the release of phase II bond liability.

In its rationale for approving Ohio's state program amendment, OSM cities the preamble to the final Federal regulation at 30 CFR 842.11 published on August 16, 1982 (47 FR 35620). The rationale was contained in OSM's response to four commenters on the proposed rule 30 CFR 842.11(c)(2)(iii)(B) (published on December 1, 1981 (46 FR 58464); OSM stated

> the same policy considerations of efficiency in Federal programs [should] apply to State programs (47 FR 35620, 35621; August 16, 1982).

The Federal regulation at 30 CFR 842.11(c)(2)(iii)(B) requires that an inactive surface coal mining and reclamation operation is one in which reclamation Phase II as defined at 30 CFR 800.40 has been completed. In the final rule OSM affirmed its agreement with the commenters and stated that:

> The final rule allows States to distinguish between active and inactive mines in the same manner as was proposed and is being adopted for OSM when acting as the regulatory authority.
>
> OSM, in its discussion of 30 CFR 842.11 responded to commenters that wanted the requirement for Phase II bond release deleted because it could cause ''OSM to continue monthly inspections long after Phase II reclamation is completed.'' 47 FR at 35627 (August 16, 1982), as follows:
>
> OSM agrees. In view of the broad discretion granted to OSM in releasing a portion of the performance bond following completion of Reclamation Phases I and II, the determination of a mine's status as active or inactive should be based solely on the completion of Reclamation Phase II.

The aforementioned position OSM took on August 16, 1982 has not been rescinded; OSM has not changed its regulations at 30 CFR 800.40 which applies when a state is the regulatory authority.

The Director finds that proposed NDAC 69–05.2–28–19.1 is consistent with and no less effective than the Federal regulations at 30 CFR 842.11(1)(c) and 800.40(c)(2) and approves it.

c. *NDAC 69–05.2–28–19.2, definition of inactive surface coal mining operations.* North Dakota proposed at NDAC 69–05.2–28–19.2 the second of the two alternative definitions of inactive surface coal mining operations, which requires that the regulatory authority has granted partial bond release for the disturbed areas. It has the same requirements as Federal regulations at 30 CFR 840.11(f)(2) in that the NDAC reference describes its Third Stage bond release which is the same as OSM's Reclamation Phase II bond release at 30 CFR 800.40(c)(establishment of vegetation on the regraded mined lands).

Since this proposed rule is substantively identical to the counterpart provision of the Federal regulations at 30 CFR 840.11(f)(2), the Director finds that proposed NDAC 69–05.2–28–18.2 is no less effective than 30 CFR 840.11(f)(2) and approves it.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program.

USDA Rural Development responded on September 25, 1997 that ''the proposed changes are consistent with USDA Rural Development construction policies (administrative record No. ND–Z–04).

USDA Agriculture Research Service responded on October 2, 1997 and stated that they believed the changes proposed in the amendment ''are necessary and an improvement.'' The Agriculture Research Service also suggested revising the wording of the proposed rule to read, ''three out of five consecutive years,'' instead of the way it currently reads, ''three out of consecutive five years'' (administrative record No. ND–Z–05). In a November 12, 1998 telephone conversation (administrative record No. 14), Director of the Reclamation Division, North Dakota Public Service Commission, Jim Deutsch, stated that he would revise the final rule to be, ''three out of five consecutive years.''

U.S. Army Corps of Engineers responded on October 16, 1997 that ''our review of the proposed changes found them to be satisfactory to our agency'' (administrative record No. ND–Z–06).

U.S. Fish and Wildlife Service responded on December 17, 1997 and stated that the ''proposed changes are logical and reasonable.'' The letter also stated: ''I do not anticipate any significant impacts on Fish and Wildlife Resources as a result of the proposed rules'' (administrative record No. ND–Z–08).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. ND–Z–03). It responded to OSM's request on September 30, 1997, and stated that it concurred with the proposed modifications (administrative record No. ND–Z–07).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND–Z–03). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves North Dakota's proposed amendment as submitted on August 29, 1997, and as supplemented with additional explanatory information on April 23, 1998.

The Director approves, as discussed in:

Finding No. 1, NDAC 69–05.2–13–01, concerning the deletion of North

Dakota's requirement for mining companies to send the Coal Production and Reclamation Fee Report to the North Dakota Public Service Commission;

Finding No. 2, NDAC 69–05.2–22–07.4.1, concerning the time frame for demonstrating reclamation success; and

Finding No. 3, NDAC 69–05.2–28–19, concerning the inspection frequency of inactive surface coal mining operations.

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

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 12988

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.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since 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)).

4. 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.*).

5. 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.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 25, 1999.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations 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
*	*	*
August 29, 1997	March 16, 1999	Rules: NDAC 69–05.2–13–01; NDAC 69–05.2–22–07.4.1; NDAC 69–05.2–28–19.

[FR Doc. 99–6352 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket #: 990204043–9043–01]

RIN 0651–AB03

Consideration of Interlocutory Rulings at Final Hearing in Interference Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Patent and Trademark Office (Office) is amending its interference regulations to clarify the standard under which the Board of Patent Appeals and Interferences (Board) considers interlocutory decisions entered by a single administrative patent judge (APJ) at the time of the final hearing.

DATES: *Effective Date:* March 16, 1999.

Comment Deadline Date: Written comments must be received on or before