Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.411(d)–4 [Corrected]

Par. 2. Section 1.411(d)–4 Q&A–2 is amended by:

1. Removing paragraph (d)(1)(ii).

2. Redesignating paragraph (d)(2)(ii) as paragraph (d)(1)(ii).

3. Adding paragraph (d)(2)(ii).

The addition reads as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

Q–2: * * *

A–2: * * *

(d) * * *

(2) * * *

(ii) *ESOP investment requirement.* Except as provided in paragraph (d)(2)(iii) of this Q&A–2, benefits provided by employee stock ownership plans will not be eligible for the exceptions in paragraph (d)(1) of this Q&A–2 unless the benefits have been held in a tax credit employee stock ownership plan (as defined in section 409 (a)) or an employee stock ownership plan (as defined in section 4975 (e)(7)) subject to section 409 (h) for the five-year period prior to the exercise of employer discretion or any amendment affecting such benefits and permitted under paragraph (d)(1) of this Q&A–2. For purposes of the preceding sentence, if benefits held under an employee stock ownership plan are transferred to a plan that is an employee stock ownership plan at the time of transfer, then the consecutive periods under the transferor and transferee employee stock ownership plans may be aggregated for purposes of meeting the five-year requirement. If the benefits are held in an employee stock ownership plan throughout the entire period of their existence, and such total period of existence is less than five years, then such lesser period may be substituted for the five year requirement.

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–18394 Filed 7–19–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–039–FOR, Amendment No. XXVIII]

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 revising its statute prescribing who may preside over formal hearings and informal conferences.

The amendment is intended to revise a North Dakota State statute to be consistent with its counterpart State regulation.

DATES: *Effective date:* July 20, 1999.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 207/261–6550, 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 March 31, 1999, North Dakota submitted a proposed amendment to its program (Amendment number XXVIII, administrative record No. ND–CC–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment at its own initiative. The provision of the North Dakota Century Code (NDCC) that North Dakota proposes to revise is: NDCC 38–14.1–30.3.f, concerning formal hearings on surface coal mining and reclamation permit applications.

We announced receipt of the proposed amendment in the April 15, 1999, **Federal Register** (64 FR 18586), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–CC–08). Because no one requested a public hearing or meeting, none was held.

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 March 31, 1999, is no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

Substantive Revisions to North Dakota's Statute That Are Substantively Identical to the Corresponding Provisions of SMCRA

North Dakota proposes revisions to the following statute that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal provisions in SMCRA (listed in parentheses).

NDCC 38–14.1–30.3.f (SMCRA 514(c)), formal hearings on surface coal mining and reclamation permit applications.

Because this proposed North Dakota statute is substantively identical to the corresponding pertinent provisions of Subsection 514(c) of SMCRA which deals with who may preside at administrative hearings or appeals thereof, the Director finds that it is no less stringent than SMCRA and therefore she approves it.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that we received, and our responses to them.

1. Public Comments

We invited public comments on the proposed amendment, but none was 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 (administrative record No. ND–CC–03).

The Natural Resources Conservation Service of the U.S. Department of Agriculture responded on April 15,

1999, that it concurred with the changes (administrative record No. ND–CC–04).

The Bureau of Indian Affairs of the U.S. Department of the Interior responded on April 24, 1999 that it did not have any objections or comments that would adversely affect the final review and approval (administrative record No. ND–CC–05).

The Bureau of Reclamation of the U.S. Department of the Interior responded on April 28, 1999, that it had no comments on the proposed amendment (administrative record No. ND–CC–06).

The U.S. Army Corps of Engineers responded on April 29, 1999, that its review of the proposed project found it to be satisfactory (administrative record No. ND–CC–07).

The U.S. Fish and Wildlife Service responded on May 11, 1999, that it did not anticipate any significant impacts to fish and wildlife resources. . . . (administrative record No. ND–CC–09).

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.*)

None of the revisions that North Dakota proposed to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment on April 9, 1999 (administrative record No. ND–CC–03). EPA did not respond to OSM's request.

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–CC–03). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above finding, we approve North Dakota's proposed amendment as submitted on March 31, 1999.

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: July 6, 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
* *	* * *	* *
March 31, 1999	July 20, 1999	NDCC 38–14.1–30.3.f.

[FR Doc. 99–18439 Filed 7–19–99; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD01–97–086]

RIN 2115–AA98

Anchorage Grounds: Hudson River, Hyde Park, NY

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: The Coast Guard is establishing Federal Anchorage 19–A in the Hudson River near Hyde Park, NY. This action is necessary to provide an anchorage ground on the Hudson River for vessels awaiting favorable tides and/or daylight for passage to facilities north of New York City. This action is intended to increase safety for vessels transiting the Hudson River by providing an anchorage ground away from congested traffic lanes used in New York Harbor.

DATES: This final rule is effective August 19, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 10, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Anchorage Grounds; Hudson River, Hyde Park, NY in the **Federal Register** (63 FR 37297). The Coast Guard received two letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

On March 31, 1999, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) entitled Anchorage Grounds: Hudson River, Hyde Park, NY in the **Federal Register** (64 FR 15322). The Coast Guard received no letters commenting on the supplemental proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Hudson River Pilots Association requested that the Coast Guard establish a federal anchorage ground in the Hudson River near Hyde Park, New York. The closest anchorage to the requested anchorage is down river to anchorage number 17, the northern boundary of which lies between the Yonkers municipal pier and the pilot station just to the north. The area that the Pilots Association has suggested for consideration is bound by the following coordinates:

NW corner: 41° 48′ 35″ N 073° 57′ 00″ W.
NE corner: 41° 48′ 35″ N 073° 56′ 44″ W.
SE corner: 41° 47′ 32″ N 073° 56′ 50″ W.
SW corner: 41°47′32″N 073°57′10″W. (NAD 1983)

The Coast Guard received two letters commenting on the NPRM. Comments received prompted the Coast Guard to reevaluate the proposal.

One comment recommended that a minimum size of 65 feet in length be established for vessels authorized to use the anchorage because the smaller vessels would be less visible at anchor, even if they displayed the required lights or day shapes, and pose a potential hazard to mariners. The comment noted that the entire anchorage area, including the area outside the designated navigation channel, is routinely transited by vessels of various sizes and that the Special Anchorage Area at Hyde Park, NY, (33 CFR 110.60(p–3)) is available for use by vessels less than 65 feet in length. This Special Anchorage Area at Hyde Park, NY that the comment referred to was disestablished on June 1, 1998 (63 FR 23662). However, in response to these safety concerns, the Coast Guard re-evaluated the NPRM. Upon further analysis, the Coast Guard agreed that safety concerns warranted a minimum vessel length restriction and a SNPRM including this restriction was published. The safety concerns stem from the high number of vessels that transit the area of Anchorage 19–A and from background lighting on shore that will interfere with smaller vessels' anchorage lights.

In the SNPRM, the Coast Guard proposed an additional regulation restricting vessels less than 20 meters in length from using this anchorage ground without prior approval from the Captain of the Port, New York. The Coast Guard believes this restriction is reasonable given the noted safety concerns and that there are over 75 transient berths at 8 marinas within approximately 15 nautical miles of this anchorage ground for use by vessels less than 20 meters in length. Additionally, the Coast Guard is aware that transient vessels anchor to the east of Esopus Island in order to use the island as a breakwater to block the wake action caused by commercial shipping transiting the Hudson River. This protected area may be easily used by vessels less than 20 meters in length as an alternative to Anchorage 19–A because Esopus Island is approximately 500 yards north of Anchorage 19–A.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the supplemental proposed rulemaking. No changes were made to the supplemental proposed rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the following reasons: Due to icing of the river in winter months, the anchorage will be seasonal in nature, recreational traffic can still traverse the anchorage when necessary, there are over 75 transient berths at 8 marinas within approximately 15 nautical miles of this anchorage ground for vessels less than 20 meters in length to tie up in, and the anchorage ground permits unobstructed navigation in the western 350 yards of the Hudson River.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not