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April 8, 2002	July 7, 2003	62 IAC 1701.Appendix A; 1761.5; 1761.11; 1761.12; 1761.14; 1761.15; 1761.16; 1761.17; 1762.14; 1762.15; 1772.12; 1773.13(a)(1)(E), (d); 1773.15(c)(3)(B), (c)(11), (c)(13); 1778.15(e); 1778.16(c); 1780.31(a)(2); 1780.33; 1784.17(a)(2); 1784.18; 1800.40(b)(2); 1816.116(a)(2)(C); 1847.9(a).

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS ND-46-FOR, Amendment No. XXXII]

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the North Dakota regulatory program (the “North Dakota program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposed revisions to its revegetation policy document, “Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.” On its own initiative, it intended to revise its program to improve operational efficiency, clarify ambiguities, and revise its revegetation policy document to reflect the corresponding changes made to its rules, the North Dakota Administrative Code (NDAC).

EFFECTIVE DATE: July 7, 2003.

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. 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 934.12, 934.13, 934.15, and 934.30.

II. Submission of the Proposed Amendment

By letter dated November 21, 2002, North Dakota sent us an amendment to its program (Amendment number XXXII, Administrative Record No. ND-GG-01) under SMCRA (30 U.S.C. 1201 *et seq.*). It sent the amendment on its own initiative. The amendment revises North Dakota’s revegetation policy document. Many of the changes are made to incorporate rule changes that were approved by OSM and appeared in the March 2, 2001, **Federal Register** as part of State Program Amendment XXX (SPATS number ND-041-FOR) and other staff initiatives.

We announced receipt of the proposed amendment in the February 11, 2003, **Federal Register** (68 FR 6842). 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-GG-05). No one requested a public hearing or meeting so we did not conduct one. We did not receive any comments from the public.

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.

A. Minor Revisions to North Dakota’s Revegetation Document

Throughout the revegetation success guidance document, North Dakota has made editorial and clarification changes. Examples of editorial changes include changing “Soil Conservation Service or SCS” to “Natural Resources Conservation Service or NRCS”, “which” to “that”, “units” to “site”, ensuring noun verb agreement, updating references, standardizing abbreviations and mathematical symbols, and revising example calculations to reflect the latest information. The editorial changes are no less effective than the Federal regulations.

Examples of changes made to clarify the existing document include adding text in: (1) Section II-B to identify using annual county yield reported by North Dakota Agricultural Statistic Service; (2) section II-C, to explain how to use the series modifiers in identifying appropriate productivity indices for each of the soil series listed in Table 1; and (3) section III-D to identify how to apply the various sampling methodologies for cover, production and density. None of these changes substantively revises the approved “Standards for Evaluation of Revegetation Success And Recommended Procedures for Pre-And Postmining Vegetation Assessments”.

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

B. Revisions to North Dakota’s Revegetation Policy Document for Consistency With the Previously-Approved North Dakota Regulatory Program

North Dakota proposed revisions to its revegetation policy document to make it consistent with the previously-approved North Dakota regulatory program. Throughout the “Standards For Evaluation Of Revegetation Success And Recommended Procedures For Pre- And Postmining Vegetation Assessments”, North Dakota has revised language to

bring this document into compliance with regulatory language previously approved by OSM in the March 2, 2001, **Federal Register** (66 FR 13015). The section of the regulations that was approved, NDAC 69-05.2-22-07(4)(l), deals with evaluating revegetation success on prime farmlands and timeframes for demonstrating revegetation success.

Language throughout the document was, in general, revised to specify the last two "consecutive" growing seasons; to delete, "in the case of non-prime farmlands;" and "out of five consecutive years; to change eighth year to sixth year; and add "with one year being the last year" to read as follows:

in each of the last two consecutive growing seasons or any three years starting no sooner than the sixth year and with one year being the last year of the responsibility period.

This revision reflects the previously-approved change to NDAC 69-05.2-22-07(4)(l) and is no less effective.

In the cropland portion of the success standards document, language was added that specifies that a separate success standard must be calculated for prime farmland tracts unless a single yield standard has been approved as allowed by NDAC 69-05.2-22-07(4)(1), as follows:

A separate success standard must be calculated for prime farmland tracts unless a single yield standard has been approved as allowed by NDAC 69-05.2-22-07(4)(l)." and "For reclaimed prime farmland, a separate yield standard must be calculated for that tract and three years (not necessarily consecutive) of data must be submitted that demonstrates that the productivity is equal to or greater than the approved standard with 90% statistical confidence. Alternatively, if a single standard has been approved and calculated for a reclaimed tract containing a mixture of prime and non-prime farmlands as allowed by NDAC 69-05.2-22-07(4)(l), data must be submitted which demonstrates that productivity is equal to or greater than the approved standard (with 90% statistical confidence) in any three years starting no sooner than the sixth year and with one year being the last year of the responsibility period.

This revision also reflects the approved change to NDAC 69-05.2-22-07.4.1 and is no less effective.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. Revisions to North Dakota's Revegetation Policy Document With No Corresponding Federal Regulations

1. Section II-C, Cropland

North Dakota has made several changes to this section of its guidelines. These include (1) revising the equations to estimate summer fallow or continuous cropping yields to include equations for Durum wheat as well as spring wheat and to include equations for Adams County and delete Ward County; (2) inclusion of an exemption from the requirement that control areas be established two years prior to demonstrating revegetation success may be granted if documentation is submitted to the Reclamation Division that demonstrates that the management of the control area for the previous two years has been equivalent in effect to that of the reclaimed area; (3) adding a note that allows them to develop climatic correction factors when there is no yield data for a productivity index equal to 100 available for the crop being grown on both the reclaimed and control areas; and (4) revising Cropland Table 1, Spring wheat productivity indexes based on the NRCS' Soils Interpretive Guide published in January 2000.

Because the changes to this section could affect prime farmland, the NRCS has reviewed this proposed revision, as well as all the proposed changes to this document, and determined that the proposed changes are acceptable. The NRCS develops the productivity indices used by the State and is the expert in this area. The NRCS has submitted a letter of concurrence with the proposed changes to this document. Based on this letter and review of the Federal regulations at 30 CFR 816.116 and 823.15, we have determined that the proposed changes are consistent with and no less effective than the Federal regulations.

2. Section II-D, Native Grassland

North Dakota proposes to revise the diversity and seasonality standards for native grasslands. In support of the proposed change, North Dakota states that the changes in the native grassland section simplify the diversity and seasonality standards. The revegetation document previously required that reclaimed native grassland have seasonality and diversity values meeting or exceeding standards derived from either range site reference areas or NRCS range site description data. The modified standards require that at least five native grass species be present on reclaimed native grasslands, but only four native grass species will have to be

present in specified percentages. Of these four species, there must be at least two warm season species and one cool season species. The total relative composition of warm season species must be at least 15% and the native species must be at least 65% of the total species composition. The primary reasons for the revisions to the diversity and seasonality standards are (1) it simplifies the previous methodology that was overly complicated and involved and (2) with the mixing of topsoil materials during the mining and reclamation process, the overwhelming majority of the reclaimed native grassland tracts will be most similar to the "silty" range site.

The Federal regulations at 30 CFR 816.111(a)(1) require, in part, that the permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is diverse. Further, 30 CFR 816.111(b)(2) requires that the reestablished plant species shall have the same seasonal characteristics of growth as the original vegetation. OSM has determined that the proposed diversity and seasonality standards comply with the intent of 30 CFR 816.111 and are no less effective than the Federal regulations.

3. Section II-E, Tame Pastureland

North Dakota has revised its pastureland diversity standard to eliminate the numerical requirement. The revised standard focuses on the presence of the seeded pasture species and the appropriateness of any invading species. The Federal regulations at 30 CFR 816.111(a)(1) require, in part, that "the permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is diverse, effective, and permanent." No numerical standards are specified. OSM has determined that the revised diversity standard for pastureland meets the intent of the requirements of 30 CFR 816.111(a)(1) and is therefore no less effective.

4. Section II-F, Woodland Success Standards

North Dakota proposes several revisions to this section. The majority of the changes to this section are editorial in nature and provide clarification without affecting the currently approved

stocking standards. The only significant change is to the tree and shrub diversity and seasonal variety standards. North Dakota proposes to require that at least 60% of the planted tree species should be present at 50% of the initial planting rate and at least 60% of the shrub species should each comprise at least 10% of the density standard. This means an increase in the percentage of tree species that must be present by 10% and creates a minimum number of stems that must be present for each of these tree and shrub species. To support this change, North Dakota states that the standards for diversity and seasonal variety on reclaimed woodlands have been updated by revising the percentages of species that need to be present in certain quantities in order to meet the requirements for final bond release. The revised percentages were based on data from undisturbed and reclaimed woodlands at the Glenharold Mine. These changes are no less effective than the Federal regulations at 30 CFR 816.111(a)(1) concerning establishment of vegetation that is diverse, effective and permanent.

North Dakota has also added a statement that tree and shrub stems occurring as a result of natural regeneration may be counted. This new statement is consistent with the State rules at NDAC 69-05.2-22-07(4)(f) and provides additional clarification. The proposed change is also consistent with section 515(b)(19) of SMCRA, which requires the operator to establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. SMCRA specifically refers to vegetative cover capable of self-regeneration. North Dakota's allowance to include stems of trees and shrubs that are the result of regeneration in meeting vegetation success clearly complies with the intent of SMCRA and is no less effective than the Federal regulations.

5. Section II-G, Shelterbelts

North Dakota proposes to add the following language to the section on Shelterbelts: "The Commission will consider modifying the shelterbelt profile density standard if it is demonstrated that a natural disaster (e.g., disease epidemic, prolonged drought, etc.) has affected the planting.

Any replanting due to a natural disaster will be considered a normal husbandry practice which will not restart the liability period."

The regulations at 30 CFR 816.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and be included in an approved regulatory program.

In support of the proposed new language, North Dakota has stated that without knowing the exact nature of the natural disaster and the effect that it may have upon the profile density standard, it is impossible to develop modified success standards. For example, if a disease has eliminated a certain species, it may be possible to either replant a resistant variety of the same species or to require the replanting of an entirely new species. However, if only part of the planting is lost, then it must be determined for each case what effect has occurred and the possible remedies. It is not possible to spell out in detail all possible scenarios under which some sort of adjustment may be necessary. The State also added language stating that any replanting due to a natural disaster will be considered a normal husbandry practice that will not restart the revegetation liability period.

As written, North Dakota's proposal would allow it to modify the shelterbelt success standards if a natural disaster has affected the planting. The Federal regulations require that success standards be included in the approved program. However, OSM concurs with North Dakota's assessment that it is not possible to anticipate all possible scenarios that could result in a change to the shelterbelt standard. Because of the limited acreage of shelterbelts and the goal of encouraging their establishment some flexibility is necessary. OSM also notes that North Dakota only proposes to allow a change in the profile density success standard, not the requirements for vigor, competition, erosion control, or species diversity, seasonal variety and regenerative capacity.

North Dakota also proposes to allow the replanting within shelterbelts affected by natural disasters as a normal husbandry practice. Review of the NRCS Conservation Practice Standards for Windbreak/Shelterbelt Establishment (Code 380) and Windbreak/Shelterbelt Renovation (Code 650) clearly indicates that replacement of dead trees and shrubs, regardless of how they died, should be continued until the barrier's function is restored. As such the State's proposal to allow replanting without

restarting the liability period is clearly a normal husbandry practice under 30 CFR 816.116(c)(4).

OSM has determined that the proposed language is consistent with and no less effective than the requirements of 30 CFR 816.116.

6. Section II-H, Fish and Wildlife Habitat

North Dakota has revised this section to provide more flexibility in evaluating the effectiveness of the reestablished grassland for providing wildlife habitat. The actual cover standard is unaffected. The specific height requirement is eliminated in favor of a qualitative evaluation. This evaluation demonstrates compliance with the Federal requirement to establish an effective plant community.

North Dakota has also revised the diversity standard for grasslands that are used for Fish and Wildlife habitat. The revised standard requires that at least 60% of the total species composition be comprised of the seeded species. This evaluation demonstrates compliance with and is consistent with the Federal requirement to establish a diverse plant community.

Finally, North Dakota has revised its guidance on regenerative capacity to be a subjective evaluation rather than a quantitative evaluation. The Federal regulations require establishment of a plant community capable of self-regeneration. However, no quantitative evaluation is required. North Dakota's proposed changes are consistent with and no less effective than the Federal regulations requiring establishment of a plant community capable of regeneration.

The proposed changes to this section are consistent with and no less effective than the Federal regulations at 30 CFR 816.111 and 816.116(b)(3).

North Dakota has revised a portion of the Annual Crops Fish and Wildlife Habitat section to provide some additional flexibility. The changes eliminate the requirement that the cover from annual crop be approximately 10 inches in height. North Dakota proposes instead to focus on the presence of an adequate food source and adequate cover for the postmining land use. This ensures that the vegetative ground cover is adequate to achieve the postmining land use. The rule continues to require that erosion be adequately controlled to prevent contribution of suspended solids to runoff. North Dakota's proposed changes are consistent with and no less effective than the requirements of 30 CFR 816.111 and 816.116(b)(3)(iii), which require that vegetative ground cover shall not be less

than that required to achieve the approved postmining land use.

7. Section III–C, Sampling Design

North Dakota proposes revising the sampling design section. Several minor editorial changes have been made. However, the major revisions involve changes to the method for determining adequate sample sizes for two populations and the addition of a method for determining adequate sample sizes for stratified sampling. The change to the two-sample sample adequacy equation involves simplifying the calculation of the variance and mean used in the currently approved formula by simply using the data from the area, either reclaimed or reference, that has the highest variance and removing the complexity in allocating the number of samples required between the reclaimed area and the reference area.

The State has also added a method for calculating sample adequacy for stratified sampling. The proposed formula allocates the minimum sample size for each stratum based on the total number of samples necessary to adequately sample the entire area, the area of each stratum, and the variance associated with the stratum.

The regulations at 30 CFR 816.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error).

OSM has reviewed the proposed changes and additions and determined that these proposed methods are recognized approaches for determining adequate sample sizes. Use of either of these formulas, as appropriate, ensures that the sampling techniques for measuring revegetation success use a 90-percent statistical confidence interval. The proposed revisions are consistent with and no less effective than the Federal regulations.

8. Section III–D, Methods for Measuring Productivity, Cover, and Density

North Dakota has made numerous revisions throughout this section. In general, many of these proposed revisions are for clarification and do not substantively revise this section. One significant change is that North Dakota

proposes to allow the use of combines equipped with the global positioning system yield monitoring systems. The document provides specific guidance on how these systems can be used. This includes requiring calibration of the yield monitor and submission of that information along with test weight, moisture content, and dockage of the crop. If the yield monitor calibration does not correct yield values for test weight and moisture content, these corrections must also be made when reporting yield data used to show reclamation success. OSM has reviewed this proposed method and determined that it is a statistically valid sampling technique. The State has also established minimum sample sizes for evaluating hay production using both whole field and partial field harvest. This is consistent with the Federal regulations.

OSM has determined that the proposed changes to the measurements section of the document are consistent with and no less effective than 30 CFR 816.116(a)(1) and (2).

9. Section III–E, Statistical Analysis

The “Statistical Analyses” section has been rewritten to standardize the symbols used in the equations. Also, examples have been added on how to use the equations. OSM has reviewed the proposed section, which also replaces existing Appendix C, Statistical Formulae and t Distribution, and determined that all the proposed statistical equations are widely used, correctly and appropriately.

The regulations at 30 CFR 816.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program. The regulations at 30 CFR 816.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error). OSM has determined that the proposed changes to this section are consistent with and no less effective than the Federal regulations at 30 CFR 816.116(a)(1) and (2).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in the February 11, 2003, **Federal Register** (68, FR 6842* * * Administrative Record No. ND–GG–05), 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–GG–03). No comments were received.

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 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 this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

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 December 9, 2002, we requested comments on North Dakota's amendment (Administrative Record No. ND–GG–03). The SHPO responded on December 16, 2002, that he had no comments (Administrative Record No. ND–GG–04). The ACHP did not respond.

V. OSM's Decision

Based on the above findings, we approve North Dakota's November 21, 2002, amendment, as discussed in: finding A, Minor Revisions to North Dakota's Revegetation Document; finding B, Revisions to North Dakota's Policy Document for Consistency with the Previously-Approved North Dakota Regulatory Program; finding C.1, Section II–C concerning cropland; finding C.2, Section II–D, concerning native grassland; finding C.3, Section II–E concerning tame pastureland; finding C.4, Section II–F concerning woodland success standards; finding C.5, Section II–G concerning shelterbelts; finding

C.6, Section II–H concerning fish and wildlife habitat; finding C.7, Section III–C concerning sampling design; finding C.8, Section III–D concerning methods for measuring productivity, cover, and density; and finding C.9, Section III–E concerning statistical analysis.

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.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17 requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the North Dakota program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require North Dakota to enforce only approved provisions.

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, 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 that 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 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)).

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.*).

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), 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.

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: May 27, 2003.

Allen D. Klein,
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
* * * * *	* * * * *	* * * * *
November 21, 2002	July 7, 2003	<i>Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments: Section II—C, D, E, F, G, and H; Section III—C, D, and E</i>

[FR Doc. 03–17079 Filed 7–3–03; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–128–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with certain exceptions, a proposed amendment to the Pennsylvania regulatory program (the “Pennsylvania program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposed to revise its program regarding rules related to the criteria and procedures for designating areas as unsuitable for surface mining. Pennsylvania modified these rules to be consistent with the corresponding Federal regulations and SMCRA and because under its Regulatory Basics Initiative, Pennsylvania considered its former regulations to be unclear, unnecessary or more stringent than the corresponding Federal regulations.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director,

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SUPPLEMENTARY INFORMATION:

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- VI. Procedural Determinations

I. Background on the Pennsylvania 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 the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the 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 Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania’s program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

By letter dated November 22, 1999, Pennsylvania sent us an amendment to its program (Administrative Record No. PA 861.03) under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania sent the amendment to include changes made at its own initiative. The provisions of Title 25 of the Pennsylvania Code (Pa. Code) that Pennsylvania proposed to revise were: 86.1 Definitions; 86.101 Definition of terms; 86.102 Areas where mining is prohibited or limited; 86.103 Procedures; 86.121 Areas designated unsuitable for mining; 86.123 Procedures: petitions; 86.124 Initial processing, record keeping and notification requirements; 86.125 Hearing requirements; 86.126 Decision; 86.127 Data base inventory system requirements; 86.128 Public information; 86.129 Coal exploration; and 86.130 Areas unsuitable for mining.

We announced receipt of the proposed amendment in the December 27, 1999, **Federal Register** (64 FR 72297). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment’s adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on January 26, 2000. We received comments from three Federal agencies and one State agency. The Federal agencies were the U.S. Department of Labor (Mine Safety and Health Administration), New Stanton and Wilkes-Barre offices and the U.S. Environmental Protection Agency