remedial amendment period that applies to the plan pursuant to §§ 1.401(b)–1 and 1.401(b)–1T for changes under TRA '97.

§ 1.411(d)–4T [Removed]

Par. 3. Section 1.411(d)–4T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 14, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–152 Filed 1–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–037–FOR, Amendment No. XXVI]

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 of its revegetation document pertaining to prime farmland success standards, cover standards for woodlands, wetlands success standards, recreational land use success standards for tree and shrub stocking, and methods for sampling woodland cover. The amendment was intended to revise the North Dakota program to be consistent with the corresponding Federal regulations and improve operational efficiency.

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Field Office Director 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 April 9, 1998, North Dakota submitted a proposed amendment to its program (Amendment Number XXVI), administrative record No. ND–AA–05) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(aa) and (bb), and at its own initiative. The provisions of its revegetation policy document that North Dakota proposed to revise were: (1) II–C–1, II–C–3, II–C–4, II–C–5, and II–C–6 of the Cropland section to modify prime farmland provisions; (2) II–F–7 of the Woodland section; (3) II–H–9 and II–H–12 of the Wetlands section; (4) II–I–1 and II–I–2 of the Other Land Uses section; and (5) III–D–6 of the Measurements section.

OSM announced receipt of the proposed amendment in the May 8, 1998, **Federal Register** (63 FR 25428), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–AA–07). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 8, 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 April 9, 1998, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. Section II–C, Standards for Evaluation of Revegetation Success (Prime Farmland Standards)

North Dakota proposed to revise Section II–C of ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments'' (hereinafter the revegetation policy document) to be consistent with its rules at NDAC 69–06.2–22–07 (3)(c) and (4)(d) and address a required program amendment at 30 CFR 934.16(aa).

North Dakota amended Section II–C to require that for third-stage bond release (equivalent to Phase II bond release under the Federal program) the prime farmland productivity standards must have been met for a minimum of three years. For at least two of the three years, spring wheat (the deepest rooting crop) must be used to demonstrate restoration of productivity. Barley or oats may be used for the other year. For fourth-stage bond release for prime farmlands (equivalent to phase III bond release under the Federal program), at least 10 years must have elapsed and the productivity standards for third-stage bond release must have been met.

The Federal regulations at 30 CFR 800.40(c)(2) require, in part, that no part of the bond or deposit shall be released under this paragraph until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 507(b)(16) of the Surface Mining and Reclamation Control Act and 30 CFR Part 823 of the Federal regulations. The Federal regulation at 30 CFR 823.15(b)(3) requires that the measurement period for determining average annual crop production on prime farmlands shall be a minimum of 3 crop years prior to release of the operator's performance bond.

OSM required, at 30 CFR 934.16(aa) of the Federal regulations, that North Dakota revise Chapter II, Section C of its revegetation policy document and its rules at NDAC 69–05.2–22–07(3)(c) and 69–05.2–2–26–05(3)(c) to require that, prior to third-stage bond release on land reclaimed for use as prime farmland, the permittee demonstrate restoration of productivity using 3 crop years (62 FR 22889, 22892; April 28, 1997). OSM approved North Dakota's revisions to its rules as required by 30 CFR 934.16(aa).

The Director finds that proposed amendment to Section II–C of North Dakota's policy revegetation document parallels the approved revision to North Dakota's rules and is no less effective than the Federal regulations at 30 CFR 800.40(C)(2) and at 823.15(b)(3). The Director finds that North Dakota has, therefore, satisfied the required program amendment, approves the proposed revision, and removes the required amendment at 30 CFR 934.16(aa).

2. Section II–F, Standards for Evaluation of Revegetation Success (Cover Standards for Woodlands)

Existing Section II–F of North Dakota's revegetation policy document allows the use of herbaceous cover for evaluating the ground cover of woodland areas, a type of fish and wildlife habitat, at fourth-stage bond release. Herbaceous cover must be either

66% total basal cover (90% of the 73% standard) or 75% first-hit cover (90% of the 83% standard). Herbaceous cover, together with canopy cover must provide adequate protection from erosion.

North Dakota proposed to revise Section II–F to state that ground cover may be determined by sampling either total ground cover (a newly defined term), a combination of herbaceous and woody vegetation, or herbaceous understory only. Total ground cover (defined as live herbaceous cover, litter, and canopy from woody vegetation) must be at least 83%. North Dakota also revised the section to state that the herbaceous understory includes both herbaceous cover and litter. The revegetation policy document requires that total ground cover, including the canopy cover of woody vegetation, must provide adequate protection from erosion.

The Federal regulations at 30 CFR 701.5 define ground cover as the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement. The Federal regulations at 30 CFR 816.116(b)(3)(iii) requires for fish and wildlife habitat, recreation, shelter belts, or forest products that vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

North Dakota's new definition of total ground cover is no less effective than the Federal definition of ground cover at 30 CFR 701.5. North Dakota's proposed addition of a total canopy standard of 83% is derived from the approved North Dakota cover standards in Section II–F of its guideline, which are 66% basal cover (90% of the 75% cover standard) or 75% first hit cover (90% of the 83% cover standard). In turn, these standards are based on research done in North Dakota to determine what level of cover is adequate to control erosion (study entitled, ''Pasture and Hayland; Measures of Reclamation Success;'' R.E. Ries and L. Hofmann, 1984). Because the standards were approved as sufficient to control erosion and meet the approved postmining land use, the proposed total cover standard of 83% will be adequate to control erosion and meet the postmining land use of woodlands, a type of fish and wildlife habitat. The Director finds that North Dakota's proposed revision to Section II–F of the revegetation policy document is no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(iii) and approves it.

3. Section II–H, Standards for Evaluation of Revegetation Success (Wetlands Success Standards)

For premining assessments of Class III wetlands, North Dakota's revegetation policy document requires that where only a few wetlands are involved, all should be sampled. In cases where a large number occur, approximately thirty percent may be randomly selected and sampled; however, in all cases, sample numbers must be approved by the Commission based on total number of wetlands and variability. In addition, for wetland surface water quality for Class III–VI wetlands, the revegetation policy document currently requires that premining data be collected for no less than three years.

For fourth-stage bond release of wetlands which are identified as fish and wildlife habitat, the revegetation policy document currently requires documentation that vegetation of the reclaimed wetland exhibits vegetation characteristics of the wetlands class for which it was designed. This documentation may be submitted annually to the Commission or at the time of bond release; however, it should be available to the Wetlands Advisory Committee on an annual basis if requested.

North Dakota proposed to revise Section 2–H of the revegetation policy document (concerning the premining wetland assessment) to require for Class III wetlands that wetlands sampled must be based on the number present, distribution and variability. Sample numbers must be approved by the Commission. For surface water quality assessments on Class III–VI wetlands, North Dakota's proposed revision requires that the number of years that data is collected must be approved by the Commission based on distribution and variability of wetlands.

For fourth-stage bond release of wetlands North Dakota also proposed to revise Section 2–H to require that data be collected the last three years of the liability period and submitted annually. Each year's data must include the same four parameters currently included in the policy document.

The Federal regulations at 30 CFR 779.19(a) require that the permit application, if required by the regulatory authority, contain a map delineating existing vegetative types and a description of the plant communities within the proposed permit area and any proposed reference area. The description shall include information adequate to predict the potential for reestablishing vegetation. There is no Federal regulation establishing the number of years for premining surface water quality.

The Federal regulations at 30 CFR 816.116(c)(3)(i) require that for fish and wildlife habitat, to achieve phase III bond release, the appropriate vegetation parameters shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

Because North Dakota's proposed revision at Section 2–H of its revegetation policy document requires delineation of premining wetlands vegetation, North Dakota's requirements for premining assessments of wetland areas are consistent with and no less effective than the Federal regulations at 30 CFR 779.19(a). Also, because North Dakota's proposed revision requires three years of vegetation data for fourth-stage bond release (equivalent to phase III bond release under the Federal regulations) while the Federal regulation requires that vegetation parameters equal or exceed the success standard for the last two years, North Dakota's proposed revision is consistent with and no less effective than the Federal regulations at 30 CFR 816.116(c)(3)(i). Therefore the Director approves North Dakota's proposed revisions at Section 2–H of its revegetation policy document.

4. Section II–I, Standards for Evaluation of Revegetation Success (Recreational Land Use Standards for Tree and Shrub Stocking)

In response to the required amendment at 30 CFR 934.16(bb), North Dakota proposed to revise the introduction to Section II–I of its revegetation policy document, adding language to require that if areas developed for recreation use include woodland plantings and/or shelterbelts, the woody plants must meet all applicable fourth-stage bond release standards described under sections II–F and II–G of that document. North Dakota proposed to revise its discussion of postmining assessment by adding language to require: (1) If a recreation area includes woodland plantings, a demonstration, with supporting data, must be included showing that the applicable standards described under section II–F are met, and (2) if a recreation area includes shelterbelts, a demonstration, with supporting data, must be included showing that the applicable standards described under section II–G are met. North Dakota also proposed to revise its discussion of revegetation success standards for third and fourth stage bond release by adding a statement that, for recreation areas that include woodland plantings and/or

shelterbelts, the woody plants must meet all applicable standards described in sections II–F and II–G for fourth-stage bond release.

OSM required at 30 CFR 934.16(bb) that North Dakota amend its program to revise Section II–I of its revegetation policy document to require that, for areas with a postmining land use of recreation, tree and shrub stocking standards meet all the requirements of 30 CFR 816.116(b)(3).

The Federal regulations at 30 CFR 816.116(b)(3) require for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program wide or a permit-specific basis. Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility. Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

As proposed by North Dakota, Section II–I incorporates by reference the requirements of Sections II–F, Woodland, and II–G, shelterbelts. These sections include requirements for consultation and approval of stocking and planting arrangements, time-in-place requirements, and ground cover standards. Both of these sections were approved by OSM as no less effective than the requirements of 30 CFR 816.116(b)(3) on July 14, 1995 (60 FR 36213, 36215). The Director finds that, by incorporating references to Section II–F, Woodland, and II–G, Shelterbelts, Section II–I of North Dakota's revegetation policy document is no less effective than the Federal regulations and satisfies the required program amendment. The Director approves the proposed revisions at Section II–1 and removes the required amendment at 30 CFR 934.16(bb).

5. Section III–D, Standards for Evaluation of Revegetation Success (Methods for Sampling Woodland Cover)

North Dakota proposed to revise Section III–D of its revegetation policy document to allow the use of a Daubenmire frame or line intercept methods for measuring total cover in woodlands. These methods may only be used where woody vegetation is present.

The Federal regulations at 30 CFR 816.116(a)(1) require that the regulatory authority identify and include in their approved program statistically valid sampling techniques.

The two cover sampling techniques proposed for inclusion in the North Dakota guidance document are well recognized and statistically valid methods for evaluating ground cover in plant communities. The Director finds that North Dakota's proposed revision of Section III–D in the revegetation policy document is therefore no less effective than the Federal regulations at 30 CFR 816.116(a)(1) 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. In response, Ronald E. Ries, Range Scientist with the U.S. Department of Agriculture's Agriculture Research Service responded on May 28, 1998, that the proposed changes are technically sound and make the use of the standards more workable based on field experience of operators and the ND Public Service Commission (administrative record No. ND–AA–09).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. ND–AA–07). 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–AA–07). 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 April 9, 1998. The Director approves, as discussed in: finding No. 1, Section II–C, concerning standards for evaluation of revegetation success; finding No. 2, Section II–F, concerning cover standards for woodlands; finding No. 3, Section II–H, concerning wetlands success standards; finding No. 4, Section II–I, concerning recreational land use success standards for tree and shrub stocking; and finding No. 5, Section III–D, concerning methods for sampling woodland cover. Also, as discussed in findings Nos. 1 and 4, the Director removes the required program amendments at 30 CFR 934.16(aa) and (bb).

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 signficiant 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: December 21, 1998.

Richard J. Seibel,

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 a follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
April 9, 1998	January 8, 1999	Revegetation Success Policy Doc. II–C, Prime Farmlands standards. II–F, Woodlands cover standards. II–H, Wetlands standards. II–I, Recreational land use standards for tree and shrub stocking. III–D, Methods for sampling woodland cover.

§ 934.16 [Amended]

3. Section 934.16 is amended by removing and reserving paragraphs (aa) and (bb).

[FR Doc. 99–383 Filed 1–7–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 290

[DCAA Reg. 5410.8]

Defense Contract Audit Agency (DCAA) Freedom of Information Act Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This administrative amendment is a result of the provisions of the Electronic Freedom of Information Act Amendments of 1996, updates address listings in Appendix B, and makes other minor administrative changes.

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, (703) 767–1005.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 290

Freedom of information.

Accordingly, 32 CFR part 290 is amended to read as follows:

PART 290—[AMENDED]

1. The authority citation for part 290 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 290.4 [Amended]

2. Section 290.4 is amended by revising ''It is the policy of DCAA to:'' to read ''Agency policy and procedures are those cited in DoD 5400.7–R. In addition, DCAA will:''

§ 290.5 [Amended]

3. Section 290.5 is amended in paragraph (a) by revising ''Chief, Information Resources Management Branch (CMR)'' to read ''Chief, Administrative Management Division''

§ 290.6 [Amended]

4. Section 290.6 is amended in paragraph (a)(1)(i) by revising ''Information Resources Management Branch'' to read ''Chief, Administrative Management Division'', paragraph (a)(2), introductory text, by removing ''Chief, Information Resources Management Branch, CMR, under the supervision and guidance of the'', paragraph (a)(3), introductory text, by revising ''Chief, Information Resources Management Branch'' to read ''Chief, Administrative Management Division'', paragraph (a)(3)(iii), by removing ''5410.12 [5], Freedom of Information Act, A Manager's Guide to a Complex Law, and DCAA Pamphlet'' and footnote 5, by redesignating footnotes ''6 and 7'' as ''5 and 6'', by removing paragraph (a)(3)(vii), redesignating paragraph (a)(3)(viii) as paragraph (a)(3)(vii), and in paragraph (b)(2)(iii), last sentence, by