

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.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 934.16 that, within 60 days of the publication of this final rule, North Dakota must either submit a proposed written amendment, or a description of an amendment to the proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with North Dakota's established administrative or legislative procedures.

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(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the North Dakota program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by North Dakota of only such provisions.

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 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (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 12550) 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 of 1969 (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.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 6, 1995.

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 by adding paragraph (u) to read as follows:

§ 934.15 Approval of amendments to the North Dakota regulatory program.

* * * * *

(u) With the exceptions of Chapter II, Section C, to the extent that it allows the demonstration of productivity with less than 3 years of crop data prior to third-stage bond release on lands reclaimed for use as prime farmland; and Chapter II, Section I, to the extent that it does not include complete requirements for measuring the success of revegetation on land reclaimed for use as recreation; revisions to North Dakota's policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments," as submitted to OSM on February 17, 1994, and as revised and supplemented with explanatory information on December 21, 1994, and May 11, 1995, are approved effective July 14, 1995.

3. Section 934.16 is amended by revising the introductory paragraph, removing and reserving paragraphs (b) through (i), (w), and (x), and adding paragraphs (aa) and (bb) to read as follows:

§ 934.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), North Dakota is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with North Dakota's established administrative or legislative procedures.

* * * * *

(aa) By September 12, 1995, North Dakota shall revise Chapter II, Section C in its revegetation document and its rules at NDAC 69-05.2-22-07(3)(c) and 69-05.2-26-05(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.

(bb) By September 12, 1995, North Dakota shall revise Chapter II, Section I in its revegetation document and its rule at NDAC 69-05.2-22-07(4)(j) to require tree and shrub stocking standards that meet all requirements in 30 CFR 816.116(b)(3), including approval by the appropriate State agencies, on land reclaimed for use as recreation. North