

Therefore, no reasonable alternatives to this action are necessary.

References:

1. Taylor, Charles, et al., "Comparison of Methane Concentrations at a Simulated Coal Mine Face During Bolting," U.S. Department of Health and Human Services, Center for Disease Control, National Institute for Occupational Safety and Health (NIOSH), 1999.

2. Urosek, John E., et al., "Methane Ignitions on Roof Bolters in Underground Coal Mines," U.S. Department of Labor, MSHA, presented at and included in the proceedings of the 8th U.S. Mine Ventilation Symposium, June 11-17, 1999.

List of Subjects in 30 CFR Part 75

Fire Prevention, Mine safety and health, Reporting and recordkeeping requirements, Underground coal mining, ventilation.

Accordingly, Chapter I of Title 30 of the Code of Federal Regulations is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 75.362 is amended by adding at the beginning of paragraph (d)(2) the phrase "Except as provided for in paragraph (d)(3) of this section," and by adding paragraph (d)(3) to read as follows:

§ 75.362 On-shift examination.

\* \* \* \* \*

(d) \* \* \*

(3) As an alternative method of compliance with paragraph (d)(2) of this section during roof bolting, methane tests may be made by sweeping an area not less than 16 feet inby the last area of permanently supported roof, using a probe or other acceptable means. This method of testing is conditioned on meeting the following requirements:

(i) The roof bolting machine must be equipped with an integral automated temporary roof support (ATRS) system that meets the requirements of 30 CFR 75.209.

(ii) The roof bolting machine must have a permanently mounted, MSHA-approved methane monitor which meets the maintenance and calibration requirements of 30 CFR 75.342(a)(4), the warning signal requirements of 30 CFR 75.342(b), and the automatic de-energization requirements of 30 CFR 75.342(c).

(iii) The methane monitor sensor must be mounted near the inby end and within 18 inches of the longitudinal center of the ATRS support, and positioned at least 12 inches from the roof when the ATRS is fully deployed.

(iv) Manual methane tests must be made at intervals not exceeding 20 minutes. The test may be made either from under permanent roof support or from the roof bolter's work position protected by the deployed ATRS.

(v) Once a methane test is made at the face, all subsequent methane tests in the same area of unsupported roof must also be made at the face, from under permanent roof support, using extendable probes or other acceptable means at intervals not exceeding 20 minutes.

(vi) The district manager may require that the ventilation plan include the minimum air quantity and the position and placement of ventilation controls to be maintained during roof bolting.

\* \* \* \* \*

Dated: June 27, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03-16866 Filed 7-3-03; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[IL-099-FOR]

Illinois Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Illinois Department of Natural Resources, Office of Mines and Minerals (Department or Illinois) revised its regulations pertaining to definitions, areas designated by Act of Congress, criteria for designating areas as unsuitable for surface coal mining operations, requirements for permits and permit processing, coal exploration, and performance bond release. Illinois also corrected or removed outdated references in several regulations. Illinois

revised its program to be consistent with the corresponding Federal regulations and to clarify ambiguities.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226-6700. Internet: IFOMAIL@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Illinois Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Illinois 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 Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the June 1, 1982, Federal Register (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, and 913.17.

II. Submission of the Amendment

By letter dated April 8, 2002 (Administrative Record No. IL-5077), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). Illinois sent the amendment in response to a letter dated August 23, 2000 (Administrative Record No. IL-5060), that we sent to Illinois in accordance with 30 CFR 732.17(c), concerning valid existing rights. Illinois also included some changes at its own initiative. Illinois amended its surface coal mining and reclamation regulations at Title 62 of the Illinois Administrative Code (IAC).

We announced receipt of the proposed amendment in the May 17, 2002, Federal Register (67 FR 35072). 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 June 17, 2002. We did not receive any public comments.

During our review of the amendment, we identified editorial-type errors. We notified Illinois of these errors by letters dated May 30, 2002, and March 31, 2003 (Administrative Record Nos. IL-5078 and IL-5082, respectively).

By letter dated March 14, 2003 (Administrative Record No. IL-5081), Illinois sent us revisions to its proposed program amendment. Also by letter dated April 25, 2003 (Administrative Record No. IL-5083), Illinois sent additional information. Because the revisions were editorial in nature and the additional information merely clarified certain provisions of Illinois' amendment, we did not reopen the public comment period.

**III. 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. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

*A. Minor Revisions to Illinois' Regulations*

1. Illinois deleted its definition of "Interagency Committee" at 62 IAC 1701.Appendix A. Illinois removed this definition because Illinois Public Act 90-0490 abolished the Illinois Interagency Committee on Surface Mining Control and Reclamation (Interagency Committee) through an amendment to 225 Illinois Compiled Statutes (ILCS) 720/1.05 in 1997.

On November 21, 2001, we approved the amendment to 225 ILCS 720/1.05 (66 FR 58371). Therefore, we find that the removal of the definition will not make Illinois' regulations less effective than the Federal regulations.

2. In the general definition section at 62 IAC 1701.Appendix A, Illinois removed the existing language from its definition of "valid existing rights" and replaced it with a reference to the new definition of "valid existing rights" found at 62 IAC 1761.5. Illinois' regulations at 62 IAC Part 1761 concern areas designated by Act of Congress.

We find that relocating the definition of "valid existing rights" to the section concerning areas designated by Act of Congress is consistent with the Federal regulations at 30 CFR Part 761. We also find that providing a reference in the general definition section to the new definition of "valid existing rights" will clarify the location of the new definition for persons using the Illinois regulations.

3. Illinois proposed to redesignate existing 62 IAC 1762.14, concerning exploration on land designated as unsuitable for surface coal mining operations, as new 62 IAC 1762.15. However, during the adoption of redesignated 62 IAC 1762.15, two editorial errors were made. We notified Illinois of these errors on March 31, 2003 (Administrative Record No. IL-5082). By letter dated April 25, 2003 (Administrative Record No. IL-5083), Illinois indicated that the editorial errors would be corrected in the next State rulemaking.

We find that the redesignation of 62 IAC 1762.14 as 62 IAC 1762.15 is consistent with a recent change made to the counterpart Federal regulation. OSM redesignated its regulation concerning exploration on land designated as

unsuitable for surface coal mining operations as 30 CFR 762.15. See 64 FR 70766, dated December 17, 1999. For this reason and because the editorial errors will not affect Illinois' implementation of its regulations concerning exploration on land designated as unsuitable for surface coal mining operations, we are approving 62 IAC 1762.15.

4. Illinois corrected citation references, made minor wording changes, and simplified its use of numbers in 62 IAC 1772.12, Permit Requirements for Exploration Removing More than 250 Tons of Coal; 1773.13(a)(1)(E) and (d), Public Participation in Permit Processing; 1773.15(c)(3)(B), (c)(11), and (c)(13), Review of Permit Applications; 1778.15(e), Right of Entry Information; 1778.16(c), Relationship to Areas Designated Unsuitable for Mining; 1780.31(a)(2), Protection of Public Parks and Historic Places; 1780.33, Relocation or Use of Public Roads; 1784.17(a)(2), Protection of Public Parks and Historic Places (Underground Mining); 1784.18, Relocation or Use of Public Roads (Underground Mining); 1816.116(a)(2)(C), Success of Revegetation; and 1847.9(a), Bond Release Public Hearings.

Because these changes are minor, we find that they will not make Illinois' regulations less effective than the corresponding Federal regulations.

*B. Revisions to Illinois' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

Illinois' regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

| Topic                                                                                                                                          | State regulation                     | Federal counterpart regulation    |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-----------------------------------|
| Definition of Valid Existing Rights .....                                                                                                      | 62 IAC 1761.5 .....                  | 30 CFR 761.5.                     |
| Exceptions to Existing Operations .....                                                                                                        | 62 IAC 1761.12 .....                 | 30 CFR 761.12.                    |
| Procedures for Relocation or Closing of a Public Road or Waiving the Prohibition on Mining Operations within the Buffer Zone of a Public Road. | 62 IAC 1761.14 .....                 | 30 CFR 761.14.                    |
| Procedures for Waiving the Prohibition on Surface Coal Mining Operations within the Buffer Zone of an Occupied Dwelling.                       | 62 IAC 1761.15 .....                 | 30 CFR 761.15.                    |
| Submission and Processing of Requests for Valid Existing Rights Determinations.                                                                | 62 IAC 1761.16 .....                 | 30 CFR 761.16.                    |
| Department Obligations at Time of Permit Application Review .....                                                                              | 62 IAC 1761.17 .....                 | 30 CFR 761.17.                    |
| Applicability to Lands Designated as Unsuitable by Congress .....                                                                              | 62 IAC 1762.14 .....                 | 30 CFR 762.14.                    |
| Permit Requirements for Exploration Removing More Than 250 Tons of Coal.                                                                       | 62 IAC 1772.12(b)(14), (d)(2)(D) ... | 30 CFR 772.12(b)(14), (d)(2)(iv). |

During the adoption of its new regulations at 62 IAC 1761.16 and 1772.12(b)(14) shown above, Illinois made three editorial errors. We notified

Illinois of these errors on March 31, 2003 (Administrative Record No. IL-5082). By letter dated April 25, 2003 (Administrative Record No. IL-5083),

Illinois indicated that the editorial errors would be corrected in the next State rulemaking. Because the editorial errors made to 62 IAC 1761.16 and

1772.12(b)(14) do not affect the meaning of these regulations, we included the regulations in the table above.

Because the State regulations listed in the table have the same meaning as the counterpart Federal regulations, we find that they are no less effective than the Federal regulations.

*C. 62 IAC 1761.11 Areas Where Mining is Prohibited or Limited*

Illinois deleted existing subsection (b), which prohibited surface coal mining on specified Federal lands unless called for by Acts of Congress. Illinois also redesignated subsections (a)(1) through (a)(7) as subsections (a) through (g), corrected citation references, and simplified its use of numbers.

We are approving Illinois' deletion of 62 IAC 1761.11(b) because it is consistent with OSM's deletion of the counterpart Federal regulation at 30 CFR 761.11(h). See 64 FR 70766, dated December 17, 1999. We are also approving the other changes made to 62 IAC 1761.11 because they are minor and will not make Illinois' regulations less effective than the corresponding Federal regulations.

*D. 62 IAC 1800.40 Requirement to Release Performance Bonds*

Illinois revised 62 IAC 1800.40(b)(2) to allow the Department, when no public hearing is held, to make its final administrative decision regarding a bond release application either 60 days after the application is filed or 5 days after the close of the comment period, whichever is later.

The counterpart Federal regulation at 30 CFR 800.40(b)(2) requires the regulatory authority to make its final decision within 60 days from the filing of the bond release application if no public hearing is held. The Federal regulation at 30 CFR 800.40(a)(2) and the State regulation at 62 IAC 1800.40(a)(2) require that the notice announcing the bond release be placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. When Illinois submitted this amendment on April 8, 2002, it explained that because its public comment period extends to 30 days after the last publication of the notice announcing the bond release, it is possible for the public comment period to expire after the 60-day time limit required by 30 CFR 800.40(b)(2). We recognize that in many small communities in Illinois, the newspapers of general circulation in the locality of the surface coal mining operations may publish only one or two days a week. If

the bond release applicant does not get the newspaper advertisement placed in a timely manner, it is possible that the 60-day time limit required by 30 CFR 800.40(b)(2) would expire before the public comment period ends. We find that Illinois' proposed rule would allow a bond release decision to be issued in a timely manner while ensuring consideration of all public comments before a final bond release decision is made. Illinois' proposed rule therefore adheres to the spirit of the Federal requirements at 30 CFR 800.40 in ensuring that the State makes a final decision on the bond release application in a timely manner. Based on the above discussion, we are approving Illinois' revisions at 62 IAC 1800.40(b)(2).

**IV. Summary and Disposition of Comments**

*Public Comments*

We asked for public comments on the amendment, but did not receive any.

*Federal Agency Comments*

On April 12, 2002, 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 Illinois program (Administrative Record No. IL-5079). We did not receive any comments.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written 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 Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On April 17, 2002, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IL-5079). EPA did not respond to our request.

*State Historical 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 April 12, 2002, we requested comments on Illinois' amendment (Administrative Record No. IL-5079), but neither responded to our request.

**V. OSM's Decision**

Based on the above findings, we approve the amendment as submitted by Illinois on April 8, 2002, and as revised on March 14, 2003.

We approve the regulations proposed by Illinois with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 913, which codify decisions concerning the Illinois 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 demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

**VI. Procedural Determinations**

*Executive Order 12630—Takings*

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, these provisions have the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. See 64 FR 70766, 70822-27, December 17, 1999. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

*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.

*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, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Illinois program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Illinois program has no effect on Federally-recognized Indian tribes.

#### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which 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 913**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 2003.

**Ervin J. Barchenger,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

#### **PART 913—ILLINOIS**

■ 1. The authority citation for Part 913 continues to read as follows:

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

■ 2. Section 913.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

#### **913.15 Approval of Illinois regulatory program amendments.**

\* \* \* \* \*

| Original amendment submission date | Date of final publication | Citation/description                                                                                                                                                                                                                                                                             |
|------------------------------------|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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). |

[FR Doc. 03-17081 Filed 7-3-03; 8:45 am]  
 BILLING CODE 4310-05-P

**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