neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 529.1044b [Amended]

2. Section 529.1044b *Gentamicin sulfate solution* is amended in paragraph (b) by removing ''No. 000061'' and adding in its place ''Nos. 000061 and 051259''.

Dated: April 8, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–10913 Filed 4–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–034–FOR]

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the North Dakota regulatory program (hereinafter referred to as the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions to rules pertaining to: Permit application requirements for the disposal of noncoal wastes; performance standards concerning soil redistribution; revegetation success standards on lands developed for use as prime farmland, recreation, and on previously-mined areas to be developed for water, residential, industrial, and/or commercial uses. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiencies.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, Telephone: (307) 261–6550.

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 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, 934.16, and 934.30.

II. Proposed Amendment

By letter dated March 20, 1996, North Dakota submitted a proposed amendment (Amendment No. XXIII, administrative record No. ND–Y–01) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment on its own initiative and in response to required program amendments at 30 CFR 934.16 (aa) and (bb). OSM announced receipt of the proposed amendment in the April 24, 1996, **Federal Register** (61 FR 18100; administrative record No. ND–Y–05), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. The public comment period ended May 24, 1996. Because no one requested a public hearing or meeting, none was held.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on March 20, 1996, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to North Dakota's Rules

North Dakota proposed revisions to its approved program that are nonsubstantive in nature and consist of editorial changes. North Dakota proposed to replace, throughout its program, the name of the U.S. ''Soil Conservation Service''with its new name, the ''National Resource Conservation Service.'' North Dakota also proposed to replace the name of the North Dakota ''Department of Health and Consolidated Laboratories,'' with its new name, the ''Department of Health.''

Because these editorial revisions have no significant impact on the substance of the requirements of the program, other than to correctly identify the appropriate Federal and State agencies, the Director finds that the proposed revisions are consistent with and no less effective than the Federal program and approves them.

2. Substantive Revisions to North Dakota's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

North Dakota proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses).

NDAC 69–05.2–19–04.3 (30 CFR 816.89(b)), concerning design and construction of noncoal waste disposal sites to ensure that leachate and drainage from the noncoal waste areas does not degrade surface or underground water.

NDAC 69–05.2–26–05.3.e (30 CFR 823.15(b)(5)), concerning the demonstration of restoration of prime farmland productivity, to require an average annual yield rather than yields from three consecutive growing seasons.

Because these proposed revisions to North Dakota rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the corresponding Federal regulations. The Director approves these proposed revisions.

3. NDAC 69–05.2–09–02.8, Permit Applications Requirements for Noncoal Waste Disposal

North Dakota proposed to revise NDAC 69–05.2–09–02.8, which currently provides that the required maps and plans of the proposed permit and adjacent areas show each coal storage, cleaning, and loading area, and each coal waste and noncoal waste storage area. Under the proposed revisions, for noncoal wastes that will be disposed of in the proposed permit area, the applicant would be required to provide a description of: (1) Any wastes listed under NDAC 33–20–02.1–01.2.i and (2) ''any other wastes requiring a permit from the state department of

health.'' Pursuant to NDAC 33–20–02.1–01.2.i, a solid waste management permit is not required for the disposal of certain specified mining operation wastes into areas designated in a surface coal mining permit issued by the State regulatory authority for such disposal. Thus, the Director interprets the proposed revision as requiring a description of all noncoal wastes that will be disposed of in the proposed permit area, whether or not the applicant is required to obtain a solid waste management permit from the State Department of Health. North Dakota also proposed to require that the location of any noncoal waste disposal areas within the proposed permit area be shown on a map of the permit area.

There are no exact Federal counterpart provisions to the State's proposed revisions to NDAC 69–05.2–09–02.8. Pursuant to 30 CFR 730.11(b), States may promulgate regulations for which no corresponding provisions exist in SMCRA or the Federal regulations. Since there are no exact Federal counterpart provisions, OSM compared North Dakota's proposed revisions to NDAC 69–05.2–09–02.8 for consistency with section 515(b)(14) of SMCRA and the Federal regulations at 30 CFR 780.11(b)(4).

Section 515(b)(14) of SMCRA requires that surface coal mining and reclamation operations be conducted in a manner which insures, among other things, that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters. The Federal regulations at 30 CFR 780.11(b)(4) require that each permit application contain a narrative explaining, among other things, the use and maintenance of coal processing waste and noncoal disposal areas. Existing North Dakota rule NDAC 69–05.2–09–01 ''Permit applications—Operation plans—General requirements'' requires that ''Each application must contain a detailed description of the proposed mining operations, including: ''3. A narrative for each operations plan explaining the plan in detail and the construction, modification, use and maintenance of each mine facility, water and air pollution control facilities or structures, * * *. In addition, NDAC 69–05.2–09–02. ''Permit applications—Operation plans—Maps and plans.'' requires that ''Each application must contain * * * an appropriate combination of * * * topo maps, planimetric maps, and plans of the proposed permit and adjacent areas showing: ''8. Each coal storage, cleaning and loading area, and each coal waste and noncoal waste storage area.'' These North Dakota rules meet the requirements of 30 CFR 780(b)(4).

The Director finds that North Dakota's proposed revisions will assist the State in insuring that wastes produced by surface coal mining and reclamation operations be disposed of in a manner designed to prevent contamination of ground or surface waters.

Based on the above discussion, the Director finds that North Dakota's proposed revisions to NDAC 69–05.2–09–02.8 are not inconsistent with section 515(b)(14) of SMCRA or the provisions of 30 CFR 780.11(b)(4) and approves the proposed revisions.

4. NDAC 69–05.2–13–02, General Requirements for an Annual Map

North Dakota proposed to revise NDAC 69–05.2–13–02 to more clearly specify the required scale for an annual map (1:4,800), and to allow another scale upon approval of North Dakota's Public Service Commission.

There are no exact Federal counterpart provisions to the State's proposed revisions to NDAC 69–05.2–13–02 as the Federal regulations do not require submission of an annual map. Pursuant to 30 CFR 730.11(b), States may promulgate regulations for which no corresponding provisions exist in SMCRA or the Federal regulations. Since there are no exact Federal counterpart provisions, OSM evaluated North Dakota's proposed revisions to NDAC 69–05.2–13–02 for consistency with the Federal regulations at 30 CFR 777.14(a), which deals with the requirements for maps submitted with a permit application.

The Federal regulations at 30 CFR 777.14(a) require, among other things, that maps of the permit area submitted with applications shall be presented at a scale of 1:6,000 or larger and maps of the adjacent area shall be in a scale determined by the regulatory authority, but in no event smaller than 1:24,000.

North Dakota's proposed rule provides for reporting requirements on maps that are larger than those required by the Federal program. Because the required maps are on a larger scale than required to be in Federal permit applications and locations will therefore be shown with more specificity, the required map scale is not inconsistent with the Federal regulation at 30 CFR 777.14. Given that there is no Federal counterpart for reporting on annual maps, and given 30 CFR 730.11(b) which has been previously discussed in this section, the requirement for annual maps at other scales approved by the Public Service Commission is not inconsistent with the requirements of the Federal program. Moreover, the Director notes that the North Dakota provision concerning maps submitted with a permit application, NDAC 69–05.2–09–02, requires the scale of such maps to be 1:4,800.

Based on the aforementioned discussion, the Director finds that the proposed revisions to NDAC 69–05.2–13–02 are not inconsistent with the requirements of the Federal regulations at 30 CFR 777.14(a) and approves the proposed revisions.

5. NDAC 69–05.2–15–04.4.a(2)(c), Performance Standard Concerning an Alternative Method for Determining the Requirements for Redistribution of Suitable Plant Growth Material

On October 21, 1986 (51 FR 37271, 37273, finding No. 8), the Director approved the provision at NDAC 69–05.2–15–04.4(a)(2) that allows an alternative method for determining the depth of suitable plant growth material required to be redistributed. North Dakota now proposes to revise NDAC 69–05.2–15–04.4a(2)(c) to specify that the rule is effective for those areas distributed prior to the year 1999, rather than 1997. Because there is no exact Federal counterpart provision to the State's proposed revision, 30 CFR 730.11(b) is relevant. It says that States may promulgate regulations for which no corresponding provisions exist in SMCRA or the Federal regulations. The effect of proposed NDAC 69–05.2–15–04.4a(2)(c) is to extend the applicable time of the rule by two years, to 1999.

The Federal regulations at 30 CFR 816.22 allow an operator to demonstrate to the regulatory authority that the resulting soil medium of substituting or supplementing the overburden soil medium is equal to or more suitable for sustaining vegetation.

OSM notes that the technical information submitted when the alternative was first approved indicates that adverse effects on vegetation were unlikely. Further, permittees employing the alternative are still responsible for meeting revegetation success standards at the end of the responsibility period.

North Dakota explained (administrative record Nos. ND–Y–13, 14, 16) that the time extension until 1999 is necessary because a draft of a study, which just became available in 1997, and which examined the option of respreading a lesser amount of suitable plant growth material rather than the procedure imposed by existing North Dakota State rules, shows no difference in vegetation results and therefore there is no rational basis for not allowing the State to allow its operators to use the

less expensive option. In addition, before the study is finalized and data completely synthesized and analyzed, the State sees no reason why the option should not be continued until its 1999 sunset provision is eliminated and the option becomes permanent.

The Director agrees with the State and finds that the proposed revision to NDAC 69–05.2–15–04.4.a(2)(c) is not inconsistent with the Federal regulations at 30 CFR 816.22 and approves the proposed revision.

6. NDAC 69–05.2–19–04.2, Performance Standards for the Disposal of Noncoal Wastes

The modified regulation as proposed by North Dakota would provide as follows:

Noncoal wastes including concrete products, plastic material, abandoned mining machinery, wood materials, and other non-hazardous materials generated during mining and noncoal waste materials from activities outside the permit area, such as municipal wastes, must be placed and stored in a controlled manner in a designated approved portion of the permit area. Placement and storage must ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. Any wastes containing asbestos may not be disposed of in the permit area unless specific approval is obtained from the state department of health. Solvents, grease, lubricants, paints, flammable liquids, and other combustible materials must be disposed off the permit area except for land treatments of small spills as approved by the state department of health.

The Federal regulations at 30 CFR 816.89(a) provide for placement and storage of noncoal mine wastes such as grease, lubricants, flammable liquids, garbage and abandoned mining machinery in a controlled manner in a designated portion of the permit area. In addition, .89(a) goes on to say that ''Placement and storage shall ensure that leachate and surface run off do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. The Federal regulations at 30 CFR 816.89(b) provide that final disposal of such noncoal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. They go on to state ''Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal waste area does not degrade surface or underground water.'' Further, that ''Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste.'' And that ''When disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 886.111 through 886.116.'' Finally, that ''Operation of the disposal site shall be conducted in accordance with all local, State, and Federal requirements.''

North Dakota's proposed requirement at NDAC 69–05.2–19–04.2 that ''solvents, grease, lubricants, paints, flammable liquids, and combustibles in general, be disposed of off the permit area'' is consistent with the federal regulation insofar as the federal regulations at 30 CFR 816.89(b) anticipate disposal of non-coal wastes either in a designated disposal site on the permit area or in a State-approved solid-waste area. The North Dakota Department of Health rules at NDAC 33–20–04.1 contain the general performance standards for solid waste management facilities including performance standards for, among other things, location, plan of operation, record keeping and reporting, closure, transfer stations, baling and compaction systems and drop box facilities, solid wastes and resource recovery, and general disposal.

The state also proposes that, ''any wastes containing asbestos may not be disposed of in the permit area unless specific approval is obtained from the state department of health.'' There is no direct Federal counterpart regulation. Pursuant to 30 CFR 730.11(b), States may promulgate provisions for which no corresponding provisions exist in SMCRA or the Federal regulations. Moreover, the Director finds that the State proposal is not inconsistent with the requirements of the Federal regulations at 30 CFR 816.89.

North Dakota's proposed allowance for the placement and storage of nonhazardous non-coal waste materials, including concrete, plastic, and wood, is not less effective than the Federal regulations at 30 CFR 816.89(a). Like the Federal regulations, the State regulations require that such wastes be placed and stored in a controlled manner in a designated approved portion of the permit area. The State regulations also require, like the Federal regulations, that placement and storage of nonhazardous noncoal wastes ensure that: (1) Leachate and surface runoff do not degrade surface or ground water; (2) fires are prevented; and (3) that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. In addition, North Dakota solid waste management rules specify detailed standards for storage and treatment which apply to of nonhazardous solid waste, including ''solid waste stored or treated in piles, composting, sludge piles, tire piles . . ., garbage which is in place for more than three days, putrescible waste, other than garbage, which is in place for more than three weeks, and other solid waste not intended for recycling which is in place for more than three months.'' *See e.g.*, NDAC 33–20–04.1–07 and NDAC 33–20–01.1–04.

North Dakota's proposed rules are different from the Federal regulations insofar as the State standards for placement and storage of noncoal waste within the permit area only apply to nonhazardous noncoal waste. The Federal regulations at 30 CFR 816.89 are not so limited. That is, the Federal standards for placement and storage of noncoal wastes apply to *all* types of noncoal wastes.

The rationale provided by North Dakota for not including standards for placement and storage of hazardous noncoal wastes on the permit area is that the State does not allow the storage or placement of hazardous wastes on the permit area (see the telephone conference call of 1/23/97 with Jim Deutsch, administrative record No. ND–Y–15). The State explained that such wastes will be routinely picked up from the permit area and disposed of off-permit. However, in order to be no less effective than the counterpart Federal regulations, the State must provide standards for placement and storage of all types of noncoal wastes, even if certain wastes will only be stored or placed on the permit area for a short period of time before they are removed for disposal off-permit.

Based upon the above discussion, the Director finds that proposed NDAC 69–05.2–19–04.2 is not inconsistent with the Federal regulations at 30 CFR 816.89(a) and (b), concerning disposal of noncoal wastes on the permit site, and approves the proposed rule. However, the State needs to provide standards for placement and storage of all types of noncoal wastes and therefore the Director is requiring North Dakota to further amend the rule to include placement and storage standards for all types of noncoal wastes.

7. NDAC 69–05.2–22–07.3.c and 4.d, and NDAC 69–05.2–26–05.3.c, Requirements for Demonstrating Success of Revegetation Prior to Stage 3 Bond Release on Prime Farmland

OSM required at 30 CFR 934.16(aa) that North Dakota 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 stage 3 bond release on land reclaimed for use as prime farmland, the permittee demonstrate restoration of productivity using 3 crop years (finding No. 3.a, 60 FR 36213, 36217 through 18, July 14, 1995; administrative record No. ND–Y–10).

In response to this required amendment, North Dakota proposed to revise NDAC 69–05.2–22–07.3.c to require, for demonstration of success of productivity on prime farmland prior to stage 3 bond release (equivalent to OSM's Phase II release), that the annual average crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for a minimum of three crop years. North Dakota proposed to revise NDAC 69–05.2–26–05.3.c, concerning the demonstration of restoration of prime farmland productivity, to reference the measurement period (3 years) for determining average annual crop production that is specified at proposed NDAC 69–05.2–22–07.3.c. In addition, North Dakota proposed to revise NDAC 69–05.2–22–07.4.d, concerning requirements for final or stage 4 bond release (equivalent to OSM's Phase III release), to reference the demonstration required at proposed NDAC 69–05.2–22–07.3.c for stage 3 bond release in addition to the requirement for the completion of the 10 year liability period.

The Federal regulations at 30 CFR 800.40, concerning phase II bond release on prime farmland, and 30 CFR 823.15(b), concerning the measurement for success of productivity on prime farmland prior to bond release, require a successful demonstration of productivity using 3 years of data prior to phase II bond release (equivalent to North Dakota's stage 3 bond release).

Because North Dakota has, with the revisions described above, clearly required that a permittee demonstrate restoration of productivity using 3 crop years prior to stage 3 bond release on land reclaimed for use a prime farmland, the Director finds that the proposed revisions to NDAC 69–05.2–22–07.3.c and 4.d and NDAC 69–05.2–26–05.3.c are no less effective than the Federal regulations at 30 CFR 800.40 and 823.15(b). The Director approves the proposed revisions.

However, because North Dakota has, with the above rule revisions, only partially satisfied the requirement at 30 CFR 934.16(aa), the Director is revising 30 CFR 934.16(aa) to state that North Dakota must revise Chapter II, Section C in its revegetation document to require, prior to stage 3 bond release on land reclaimed for use as prime farmland, the permittee demonstrate restoration of productivity using 3 crop years, consistent with the proposed rules discussed in this finding. (In its side-by-side comparison which it submitted along with its 3/30/96 State Program Amendment proposal, North Dakota stated that ''once the rule change is in place, North Dakota will make the appropriate modification to its revegetation document).

8. NDAC 69–05.2–22–07.4.i, Final Bond Release on Previously Mined Areas

North Dakota proposed to revise NDAC 69–05.2–26–07.4.i, concerning the stage 4 or final bond release requirement for ground cover on previously mined areas, to delete the phrase ''of living plants'' which appears whenever the term, ''ground cover'' is used.

The Federal regulations at 30 CFR 816.116(b)(5) require that vegetative ground cover shall not be less than the cover existing prior to redisturbance and shall be adequate to control erosion. The requirements for ground cover at final bond release at proposed NDAC 69–05.2–22–07.4.i are otherwise substantively identical to the Federal regulations at 30 CFR 816.116(b)(5). North Dakota explained that it deleted the phrase ''of living plants'' because ''by definition, ground cover is vegetative'' (administrative record number ND–Y–08) and is therefore duplicative and unnecessary. Moreover, North Dakota's existing definition of ''ground cover'' at NDAC 69–05.2–01–02.39 is substantively identical to the same Federal definition at 30 CFR 701.5. Both include the statement that ground cover is vegetative.

Based on the aforementioned discussion, the Director finds that the proposed revision to NDAC 69–05.2–22–07.4.i is no less effective than the Federal regulation at 30 CFR 816.116(b)(5) and approves the proposed revision.

9. NDAC 69–05.2–22–07.4.j, Final Bond Release Requirements for Ground Cover on Areas to be Developed for Water, Residential, or Industrial and Commercial Uses

North Dakota proposed to revise NDAC 69–05.2–22–07.4.j, concerning the final bond release requirement that ground cover must not be less than that required to control erosion, to delete a reference to ''recreation'' so that the rule applies only to ''areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement'' and to delete the phrase ''of living plants'' after ''ground cover 'of living plants' on these areas must not be less than required to control erosion.''

North Dakota's requirement at proposed NDAC 69–05.2–22–07.4.j, that ground cover, prior to final bond release, must be not be less than that required to control erosion, is substantively identical to the requirement for ground cover on land developed for residential or commercial and industrial use at 30 CFR 816.116(b)(3). North Dakota's proposed deletion of the reference to ''recreation'' is appropriate because proposed NDAC 69–05.2–22–07.4.k now addresses standards for land reclaimed for use as recreation (see discussion in finding No. 10 below). The deletion of the word ''areas'' after water is editorial in nature and does not affect the substance of the rule. As stated in the preceding finding No. 8, North Dakota explained that the term ''of living plants'' is duplicative since ground cover by definition is living plants.

Therefore, the Director finds that the proposed revisions to NDAC 69.05.2–22–07.4.j are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and approves the proposed revisions.

10. NDAC 69–05.2–22–07.4.k, final Bond Release requirements for Ground Cover and Woody Plant Stocking and Plant Establishment Standards on Areas Developed for Recreation

OSM required at 30 CFR 934.16(bb) that North Dakota 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. OSM also required that North Dakota also provide documentation of consultation with and approval from the appropriate State agencies for the ground cover standard in Chapter II, Section I on land reclaimed for use as recreation. (finding No. 3.e, 60 FR 36213, 36219, July 14, 1995; administrative record No. ND–Y–10).

In response to the required amendment at 30 CFR 934.16(bb), North Dakota proposed to add a new rule at NDAC 69–05.2–22–07.4.k, concerning land reclaimed for use as recreation, that requires (1) Standards for woody plants by reference to NDAC 69–05.2–22–07.4e(1) and f, existing approved rules for respectively, revegetation in general and fish and wildlife habitat or

shelterbelts standards, and (2) ground cover not less than that required to achieve the approved postmining land use.

For areas developed for use as recreation, the Federal regulations at 30 CFR 816.116(b)(3) (i) through (iii) and 817.116(b)(3) (i) through (iii) require, that success of revegetation be determined on the basis of tree and shrub stocking and vegetative ground cover and include the requirements that, among other things, (1) Permit specific or programwide 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, (2) trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons, (3) 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, and (4) vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

By referencing the tree and shrub standards at previously approved NDAC 69–05.2–22–07.4e(1) and f, North Dakota has included in its requirements for final bond release on land developed for recreation, woody plant (i.e. tree and shrub) standards that are no less effective than the requirements in the Federal regulations at 30 CFR 816.116(b)(3) (i) and (ii). North Dakota's proposed requirement that ground cover must not be less than required to achieve the approved postmining land use is substantively identical to the Federal regulations at 30 CFR 816.116(b)(3)(iii). OSM erred in its requirement that ground cover standards must also meet the consultation and approval requirement of appropriate State agencies. That requirement is only applicable to woody plants.

Based on the above discussion, the Director finds that North Dakota's proposed revisions to NDAC 69–05.2–22–07.4.k are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3). The Director approves the proposed revisions to NDAC 69–05.2–22–07.4.k.

However, because North Dakota has, with the above rule revisions, only partially satisfied the requirement at 30 CFR 934.16(bb), the Director is revising 30 CFR 934.16(bb) to state that North Dakota must revise Chapter II, Section C in its revegetation document 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. It should be noted that in the ''Changes and Legal Effect'' column of the side-by-side comparison chart that North Dakota submitted with this State Program Amendment, North Dakota stated that it would make the appropriate modification to its revegetation document ''once these rule changes are in place''

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that we 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 § 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program (administrative record No. ND–Y–01).

The U.S. Natural Resources Conservation Service, responded on June 18, 1996 (administrative record No. ND–Y–07), with the following comment concerning the performance standards for prime farmland:

> The [North Dakota's] previous standards stated that crop production on prime farmland must be equal to or greater than that of approved reference areas for three consecutive years. It now states that annual average crop production must be equal to or greater than that of approved reference areas for a minimum of three crop years.
>
> Our understanding of this change is that it would allow the performance standards to be dependent upon the selection of three years of yield information instead of the last three years of crop production. This would allow the selection of the most optimum data and may not truly reflect the average production of the permit area. This change seems to weaken the language related to the performance standards.

The commenter referred to the revisions proposed by North Dakota at NDAC 69–05.2–22–07.3.c and 69–05.2–26–05.3.c. North Dakota revised these rules to require a demonstration of restoration of productivity on prime farmland prior to stage 3, rather than stage 4, bond release, using the average annual yields from 3 crop years rather than from 3 consecutive crop years. It is the *comparison* of yield data from the reclaimed area to yield data from nonmined prime farmland (or to a technical standard determined from data applicable to the reclaimed and surrounding nonmined prime farmland) that determines whether restoration of productivity is successful. Because crop data will fluctuate accordingly for both mined and nonmined prime farmland, a meaningful comparison can be made whether the 3 years are consecutive or not. In addition, because the Federal regulations at 30 CFR 730.5(b) only require that a State's laws be ''in accordance with'' and ''no less effective than'' the Federal regulations meeting the requirements of SMCRA, the Director does not have the authority to require standards in excess of the Federal regulations that implement SMCRA. For this reason, the Director is not requiring that North Dakota further revise its program in response to this comment.

The U.S. Fish and Wildlife Service responded on May 3, 1996 (administrative record No. ND–Y–04), that the proposed changes were logical and reasonable.

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

OSM solicited EPA's concurrence with the proposed amendment (administrative record No. ND–Y–01). EPA responded on April 30, 1996 (administrative record No. ND–Y–09), with its concurrence.

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

V. Director's Decision

Based on the above findings, the Director approves, as discussed in:

Finding No. 1, nonsubstantive revisions reflecting editorial changes to include the new names of the U.S. Natural Resource Conservation Service and the North Dakota Department of Health;

Finding No. 2, NDAC 69–05.2–19–04.3 and 69–05.2–22–07.3.c, concerning substantive revisions that are

substantively identical to the corresponding provisions of the Federal regulations; concerning substantive revisions that are substantively identical to the corresponding provisions of the Federal regulations;

Finding No. 3, NADC 69–05.2–09–02.8, concerning permit application requirements for noncoal waste disposal;

Finding No. 4, NADC 69–05.2–09–02, concerning general requirements for an annual map;

Finding No. 5, NADC 69–05.2–15–04.4a(2)c, concerning an alternative method for determining the requirements for soil redistribution;

Finding No. 6, NADC 69–05.2–19–04.2, concerning performance standards for the disposal of noncoal wastes;

Finding No. 7, NADC 69–05.2–22–07.3.c and 4.d and NDAC 69–05.2–26–05.3.c, concerning requirements for demonstrating success of revegetation prior to stage 3 bond release on prime farmland;

Finding No. 8, NADC 69–05.2–22–07.4.i, concerning final bond release requirements for ground cover on previously mined areas;

Finding No. 9, NDAC 69–05–22–07.4.j, concerning final bond release requirements for ground cover on areas to be developed for water, residential or industrial and commercial uses; and

Finding No. 10, NDAC 69–05–22–07.4.k, concerning final bond release requirements for ground cover and woody plant stocking and plant establishment standards on areas developed for recreation.

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(c)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 2, 1997.

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 30 CFR part 934 continues to read as follows:

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

2. Section 934.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
March 20, 1996	April 28, 1997	NDAC 69–05.2–09–02.8 –13–02, –15–04.4a(2)c, –19–04.2, 3, –22–07.3.c, 4.d, 4.i, –26–05.3.c; 69–05, 22–07.4.j, .k; changes to new names of U.S. Natural Resource Conservation Service and the North Dakota Department of Health.

3. Section 934.16 is amended by revising paragraphs (aa) and (bb) and adding (cc) to read as follows:

§ 934.16 Required program amendments.

* * * * *

(aa) by June 27, 1997, North Dakota shall revise Chapter II, Section C of its revegetation document to require, prior to stage 3 bond release on land reclaimed for use as prime farmland, the permittee demonstrate restoration of productivity using three crop years.

(bb) By June 27, 1997, North Dakota shall revise Chapter II, Section C in its revegetation document 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.

(cc) By June 27, 1997, North Dakota shall revise its rules at NDAC 69–05.2–19–04.2, ''Performance Standards for Disposal of Noncoal Wastes,'' to include placement and storage standards for all types of noncoal hazardous wastes.

[FR Doc. 97–10823 Filed 4–25–97; 8:45 am]

BILLING CODE 4310–05–M

LEGAL SERVICES CORPORATION

45 CFR Parts 1612, 1626, and 1636

Restrictions on Lobbying and Certain Other Activities; Restrictions on Legal Assistance to Aliens; Client Identity and Statement of Facts

AGENCY: Legal Services Corporation.

ACTION: Corrections to final rules.

SUMMARY: This document contains corrections to three final rules published on April 21, 1997 (62 FR 19398–19427). The rules relate to lobbying and certain other activities; restrictions on legal assistance to aliens; and client identity and statement of facts.

EFFECTIVE DATE: The rules are effective on May 21, 1997.

SUPPLEMENTARY INFORMATION: As published on April 21, 1997 (62 FR 19398–19427), the final rules contain errors that need correction. Accordingly, the publications are corrected as follows:

§ 1612.2 [Corrected]

On page 19404, column 3, in § 1612.2(b)(2), insert ''does'' after ''legislation'' the first time it appears.

§ 1626.10 [Corrected]

On page 19415, column 3, in § 1626.10(e), insert ''to'' after ''pursuant''.

Part 1636 [Corrected]

On page 19420, column 2, in the part heading, delete ''identify'' and insert ''identity'' in its place to read as follows: ''PART 1636—CLIENT IDENTITY AND STATEMENT OF FACTS''.

Dated: April 22, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–10822 Filed 4–25–97; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–180; RM–8863]

Radio Broadcasting Services; Amargosa Valley, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Amargosa Valley Broadcasters, allots Channel 266A to Amargosa Valley, NV, as the community's first local aural broadcast service. *See* 61 FR 48659, September 16, 1996. Channel 266A can be allotted to Amargosa Valley in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–38–38 North Latitude and 116–23–58 West Longitude. With this action, this proceeding is terminated.

DATES: Effective June 2, 1997. The window period for filing applications will open on June 2, 1997, and close on July 2, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–180, adopted April 9, 1997, and released April 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Amargosa Valley, Channel 266A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–10845 Filed 4–25–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–236; RM–8907]

Radio Broadcasting Services; Wake Village, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Phillip W. O'Bryan, allots Channel 223A to Wake Village, Texas, as the community's first local FM service. *See* 61 FR 63809, December 2, 1996. Channel 223A can be allotted to Wake Village in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.4 kilometers (2.1 miles) northeast in order to avoid a short-spacing conflict with an application for Channel 224C2 at Blossom, Texas. The coordinates for Channel 223A at Wake Village are 33–25–09 NL and 94–04–18 WL. With this action, this proceeding is terminated.

DATES: Effective June 2, 1997. The window period for filing applications will open on June 2, 1997, and close on July 2, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–236, adopted April 9, 1997, and released April 18, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference