a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 9.00 percent, which will be effective from July 1, 1995, through September 30, 1995. This rate represents no change from the rate in effect for the second quarter of 1995. This rate is based on the prime rate in effect on June 15, 1995.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table a new entry to read as follows:

Appendix A to Part 2644—Table of Interest Rates

* * * * *

From	To	Date of quotation	Rate (percent)
*	*	*	*
7/01/95	9/30/95	6/15/95	9.00

Issued in Washington, DC, on this 10th days of July 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–17289 Filed 7–13–95; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions and additional requirements, 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 pertaining to its policy document entitled ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.'' The amendment is intended to revise this document to be consistent with the Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: July 14, 1995.

FOR FURTHER INFORMATION CONTACT: Guy Pagett, Telephone: (307) 261–5776.

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 934.12, 934.13, 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated February 17, 1994, North Dakota, submitted a proposed amendment to its program (Amendment No. XX, administrative record No. ND–U–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted proposed revisions to its policy document entitled ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments'' (hereinafter, the ''revegetation document'') in response to required program amendments at 30 CFR 934.16(b) through (i), (w), and (x), and at its own initiative.

OSM announced receipt of the proposed amendment in the March 14, 1994, **Federal Register** (49 FR 11744), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–U–05). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 13, 1994.

During its review of the amendment, OSM identified concerns relating to certain provisions of North Dakota's revegetation document. OSM notified North Dakota of the concerns by letter dated September 9, 1994 (administrative record No. ND–U–10). On September 14, 1994, North Dakota and OSM, during a telephone conference, discussed certain provisions of OSM's September 9, 1994, issue letter (administrative record No. ND–U–13). North Dakota responded in a letter dated December 21, 1994 (administrative record No. ND–U–14), by submitting a revised amendment and additional explanatory information that addressed the concerns identified by OSM.

Based upon the revisions to and additional explanatory information for the proposed program amendment submitted by North Dakota, OSM reopened the public comment period in the January 19, 1995, **Federal Register** (60 FR 3790; administrative record No. ND–U–15). The public comment period ended on February 3, 1995.

Subsequently, North Dakota requested a meeting with OSM to discuss it's

December 21, 1994, revisions that were made in response to OSM's September 9, 1994, issue letter. OSM and North Dakota met on April 11, 1995 (administrative record No. ND–U–16). Thereafter, by letter dated May 11, 1995 (administrative record No. ND–U–17), North Dakota submitted, at its own initiative, additional revisions and explanatory information to its revegetation success document.

Based upon the revisions to and additional explanatory information for the proposed program amendment submitted by North Dakota, OSM reopened the public comment period in the May 23, 1995, **Federal Register** (60 FR 27246; administrative record No. ND–U–23). The public comment period ended on June 7, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with certain exceptions and additional requirements, that the proposed program amendment submitted by North Dakota on February 17, 1994, and as revised by it and supplemented with additional explanatory information on December 21, 1994, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. General Substantive Revisions to North Dakota's Revegetation Document

North Dakota proposed revisions to its revegetation document that are general in nature in that the revisions are made throughout the document and/or apply to most if not all success standards and sampling techniques for all land uses. These revisions include (1) reference of technical documents used and other agencies consulted during development of the revegetation document, (2) limiting a permittee's use of revegetation success standards and sampling techniques to those approved in the revegetation document unless North Dakota and OSM approval is first obtained on a case-by-case basis, (3) use of U.S. Natural Resource Conservation Service (NRCS, formerly the Soil Conservation Service) soil mapping units and productivity indices whenever possible, rather than soil series, to develop technical productivity standards, (4) use of North Dakota agricultural annual county cropland yields to develop a correction factor for climatic variability, (5) use of a county-wide correction factor in conjunction with the NRCS yield information to adjust for climatic yield conditions on land reclaimed for use as cropland or prime farmland, (6) submission of aerial photos of areas used to develop standards, (7) submission of maps which identify either the locations of sampling transects or the sampling areas and number of randomly located sample units per area, (8) submission of cover data in tabular form showing composition by species, using absolute cover values with relative cover submitted to aid in data interpretation, (9) submission of production data by growth form, and (10) clarification that actual *sample means* must be used in formulas that determine sample size when measuring success of revegetation for bond release.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success of revegetation and statistically valid sampling techniques for measuring success of revegetation shall be selected by the regulatory authority and included in an approved regulatory program.

Because the proposed revisions identified above clarify and generally improve North Dakota's revegetation document, the Director finds that these proposed revisions are no less effective than the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1). The Director approves the proposed revisions.

2. Substantive Revisions to North Dakota's Revegetation Document Proposed in Response to Required Amendments

a. *Chapter II, Section F, countable trees and shrubs.* At 30 CFR 934.16(b), OSM required that North Dakota revise its revegetation document or otherwise amend its program to require that at least 80 percent of the trees and shrubs counted to determine revegetation success have been in place for at least 60 percent of the 10-year period of revegetation responsibility (Finding No. 26.a, 57 FR 807, 821, January 9, 1992).

North Dakota proposed to revise Chapter II, Section F, concerning reclaimed lands developed for use as woodland, to require for fourth-stage bond release that the permittee demonstrate that 80 percent of the total number of trees and shrubs planted have been in place for 60 percent of the liability period. In addition, North Dakota recommended the use of permanent quadrats in each woodland community to document the time in place requirement and required that the permittee provide documentation to verify that not more than 20 percent of the number of trees and shrubs present at year 4 have been replanted.

The Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) require, for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, that at the time of bond release, at least 80 percent of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable minimum period of responsibility.

The Director finds that North Dakota's revisions of Chapter II, Section F, concerning time in place revegetation success standards for trees and shrubs on land reclaimed for use as woodland, are no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii). The Director approves these proposed revisions and removes the required amendment at 30 CFR 934.16(b).

b. *Chapter II, Sections F and H, ground cover.* At 30 CFR 934.16(c), OSM required that North Dakota revise its revegetation document to require that evaluations of ground cover success be valid at the 90 percent confidence level (Finding No. 3, 54 FR 10141, 10142, March 10, 1989).

North Dakota proposed to revise Chapter II, Section F, concerning reclaimed lands developed for use as woodland, to require that ground cover must be equal to or greater than 90 percent of the approved standard with 90 percent statistical confidence. North Dakota also proposed to revise Chapter II, Section H, concerning reclaimed lands developed for use as fish and wildlife habitat/grassland, to require that ground cover must be equal to or greater than that of the approved reference area or standard with 90 percent statistical confidence.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that the sampling techniques for measuring success of revegetation shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

The Director finds that North Dakota's revisions of Chapter II, Sections F and H, concerning the requirement to demonstrate success of ground cover with 90 percent statistical confidence, are no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). The Director approves these proposed revisions and removes the required amendment at 30 CFR 934.16(c).

c. *Chapter II, Sections F and G, woody plant stocking.* At 30 CFR 934.16(d), OSM required that North Dakota revise its revegetation document or otherwise amend its program to require that evaluations of the success of woody plant stocking be valid at the 90 percent confidence level (Finding No. 4, 54 FR 10141, 10142, March 10, 1989).

North Dakota proposed to revise Chapter II, Section F, concerning reclaimed lands developed for use as woodland, to require that the number of woody plants must be equal to or greater than the stocking of live woody plants of the same life form of the approved standard with 90 percent statistical confidence. North Dakota proposed to revise Chapter II, Section G, concerning reclaimed lands developed for use as shelterbelts, to require that density and vigor must be equal to or greater than that of the approved standard. North Dakota did not revise this section to require that density be demonstrated with 90 percent statistical confidence. However, Chapter III, Section D, of North Dakota's revegetation document requires that density of woody vegetation be measured either by direct count of all vegetation or by the density quadrat sampling method. North Dakota proposed to revise Chapter III, Section D, to require that, when using the quadrat sampling method, enough samples must be taken to demonstrate that the number of woody plants established equals or exceeds the approved standard with 90 percent statistical confidence. The methods provided in Chapter III apply to all demonstrations of woody plant density, regardless of land use. Therefore, the revegetation document requires, for land reclaimed for use as shelterbelts, verification of woody plant density by direct count or by sampling with 90 percent statistical confidence.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that the sampling techniques for measuring success of revegetation shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

The Director finds that North Dakota's revisions of Chapter II, Section F and Chapter III, Section D, concerning the requirement to demonstrate success of woody plant density with 90 percent statistical confidence, are no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 816.116(a)(2). The Director approves these proposed revisions and removes the required amendment at 30 CFR 934.16(d).

d. *Chapter II, Sections F and H, Revegetation success measurement period.* At 30 CFR 934.16(e), OSM required that North Dakota revise its revegetation document or otherwise amend its program to require that revegetation success standards for woodlands and fish and wildlife habitats be met for at least the last two consecutive years of the revegetation responsibility period (Finding No. 26.b, 57 FR 807, 822, January 9, 1992).

North Dakota proposed to revise Chapter II, Sections F and H, concerning reclaimed lands developed for use as, respectively, (1) woodland and (2) fish and wildlife habitat using annual crops, to require that revegetation success must be measured during the last two years, rather than the final year, of the responsibility period.

The Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) require that trees and shrubs counted in determining success of revegetation shall have been in place for not less than two growing seasons.

The Director finds that North Dakota's revisions of Chapter II, Sections F and H, concerning the requirement to measure revegetation success during the last two years of the responsibility period, are no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii). The Director approves these proposed revisions and removes the required amendment at 30 CFR 934.16(e).

e. *Chapter II, Sections F and G, revegetation success standards for shelterbelts.* At 30 CFR 934.16(f), OSM required that North Dakota revise its revegetation document or otherwise amend its program to include tree and shrub stocking and vegetative ground cover success standards for all types of shelterbelts and clarify that trees and shrubs must meet time-in-place requirements no less than those established in 30 CFR 816.116(b)(3)(ii) (Finding No. 26.a, 57 FR 807, 821, January 9, 1992). As discussed below, the Director finds that North Dakota's proposed revisions to Chapter II, Sections F and G, concerning revegetation success standards for shelterbelts, are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3), and removes the required amendment at 30 CFR 934.16(f).

i. *Chapter II, Sections F and G, requirements for determining revegetation success on lands developed for use as shelterbelts.* North Dakota proposed to revise Chapter II, Section F, concerning reclaimed lands developed for use as woodland, to delete all discussion of shelterbelts so that Section F is applicable only to woodland. Requirements for determination of revegetation success on lands developed for use as shelterbelts are included in Chapter II, Section G.

North Dakota proposed to revise Chapter II, Section G to define shelterbelts as a strip or belt of trees or shrubs planted by man in or adjacent to a field or next to a farmstead, feedlot, or road, and synonymous with windbreak. North Dakota proposed to add the requirement that the stocking of trees and shrubs normally follow current standards and specifications developed by the NRCS for farmstead and field windbreaks in North Dakota, but also provided for allowance of stocking standards specified by the State Game and Fish Department or the State Forest Service.

North Dakota also proposed to revise Section G to specify that, prior to final bond release, the permittee must demonstrate in the last two years of the liability period that density and vigor are equal to or greater than that of the approved standard, erosion is adequately controlled, and that at least 80 percent of the trees and shrubs have been in place for at least 60 percent of the liability period. In addition, North Dakota requires an evaluation of the diversity, seasonality, and regenerative capacity of the shelterbelt based on the species stocked and planting arrangements. Regarding the time in place standard, North Dakota proposed to require that the permittee provide a worksheet of each shelterbelt which lists annual replantings of each species and that documentation may be made by tagging or marking with paint, by photographic records, or by preservation of sales receipts from nurseries.

The Federal regulations at 30 CFR 816.116(b)(3) (i) through (iii) and 817.116(b)(3) (i) through (iii) require, in part, that success of revegetation of shelterbelts be determined on the basis of tree and shrub stocking and vegetative ground cover and include the requirements that (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.

The Director finds that North Dakota's revisions of Chapter II, Sections F and G, concerning the requirements to determine revegetation success on reclaimed lands developed for use as shelterbelts, are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) (i) through (iii) and 817.116(b)(3) (i) through (iii). The

Director approves these proposed revisions.

ii. *Chapter II, Section G, replacement and nonreplacement shelterbelts.* North Dakota proposed to revise Chapter II, Section G to (1) clarify that the standards in Section G apply to all shelterbelts that are specified in the reclamation plan as a postmining land use or as otherwise required as part of the approved permit, and (2) delete from Section G the discussion of ''replacement'' and ''nonreplacement'' shelterbelts and their associated success standards. North Dakota explained in the cover letter to its May 11, 1995, revisions, that the intent of the provision for shelterbelts otherwise required as part of the approved permit was to give North Dakota the flexibility to require, by permit condition, that certain shelterbelts not proposed as part of the postmining land use may be required to meet the standards in Section G.

As discussed Finding No. e.i above, North Dakota has revised Chapter II, Sections F and G to require revegetation success standards for shelterbelts that are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3).

The allowance for North Dakota to require, as a condition of permit approval, shelterbelts that meet the requirements proposed in Chapter II, Section G, has no counterpart in the Federal regulations. North Dakota's proposal to require shelterbelts (with the requisite performance standards for demonstrating success of revegetation) as a condition of permit approval is not inconsistent with the Federal regulations at 30 CFR 773.15(c) and 773.17, concerning permit approval and permit conditions.

Because North Dakota has proposed to require the same success standards for all areas designated with the postmining land use of shelterbelts, the Director finds that these proposed revisions in Chapter II, Section G are no less effective than the requirements for shelterbelts in the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3), and approves the proposed revisions.

f. *Chapter II, Section H, revegetation success standards for fish and wildlife habitat.* At 30 CFR 934.16(g), OSM required that North Dakota revise its revegetation document or otherwise amend its program to require that vegetative ground cover on lands reclaimed to fish and wildlife habitat equal at least 90 percent of the success standard (Finding No. 7.a, 54 FR 10141, 10142, March 10, 1989).

North Dakota proposed to revise Chapter II, Section H, concerning reclaimed lands developed for use as fish and wildlife habitat according to vegetation type, to require that (1) for woodland and shelterbelts, the permittee address the requirements specified in, respectively, Sections F and G (Section F requires that ground cover on the reclaimed area equal or exceed 90 percent of the approved standard; Section G requires that density and vigor equal or exceed the approved standard and erosion be adequately controlled); (2) for grassland, the ground cover must be equal to or greater than the approved standard; and (3) for wetland, vegetation zones and dominant species must be equal to those of the approved standard. North Dakota already required in Section H, for annual crops, a demonstration that the height of the standing grain crop or residual cover is equal to or greater than the approved standard.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that the standards for success for ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard.

The Director finds that North Dakota's revisions of Chapter II, Section H, concerning the requirement that success standards for fish and wildlife habitat equal or exceed at least 90 percent of the approved standards for each vegetation type, are no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). The Director approves the proposed revisions and removes the required amendment at 30 CFR 934.16(g).

g. *Chapter II, Sections F and H, consultation and approval by State forestry and wildlife agencies.* At 30 CFR 934.16(h), OSM required that North Dakota submit documentation that it has obtained the concurrence of the appropriate State forestry and wildlife agencies with the revegetation success standards for lands reclaimed to fish and wildlife habitat, recreation, shelterbelt, or woodland uses, or shall submit revisions to its revegetation document and North Dakota Administrative Code 69–05.2–22–07 or otherwise amend its program to require such concurrence on a permit specific basis (Finding No. 8, 54 FR 10141, 10143, March 10, 1989).

North Dakota submitted letters of concurrence from the North Dakota Forest Service and the North Dakota Game and Fish Department, dated, respectively, April 21, and May 19, 1989. In these letters, the State agencies concurred with the standards for woodland and fish and wildlife habitat in Chapter II, Sections F and H, of North Dakota's revegetation document. In its response to OSM's September 9, 1994, issue letter, North Dakota explained that these 1989 concurrence letters are still applicable because, although the original revegetation document included shelterbelts as part of the woodland section, the stocking and planting arrangements and success standards for woodland and fish and wildlife habitat have not been revised since the letters were obtained. North Dakota refers the permittee to standards approved by the NRCS for shelterbelts (see Finding No. 2.e.i above for a discussion of the requirements for shelterbelts).

The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require, for areas to be developed for fish and wildlife habitat, recreation, shelterbelts, or forest products, that 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.

Based on the 1989 letters of concurrence from the North Dakota Forest Service and the North Dakota Game and Fish Department, the Director finds that North Dakota's revegetation document is no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i), and removes the required amendment at 30 CFR 934.16(h).

h. *Appendix A, augmentation practices.* At 30 CFR 934.16(i), OSM required that North Dakota revise the definition of augmentation practices in its revegetation document to be consistent with 30 CFR 816.116(c)(4) (Finding No. 9, 54 FR 10141, 10143, March 10, 1989).

In Appendix A, North Dakota proposed to delete the existing definition of ''augmentation practices'' (which meant those practices used to reestablish or replace vegetation or make temporary improvements to obtain bond release) and replace it with a definition of ''augmentation practices'' meaning those practices which exceed the commonly used management practices on similar unmined lands in the surrounding area. North Dakota also revised Appendix A to state that the use of an augmentation practice on reclaimed lands will reinitiate the liability period and to provide examples of augmentation practices including (1) fertilization or irrigation on cropland, hayland, and pastureland, that is not used as specified in the management plan or that is used in excessive

amounts (based on soil tests and historic use), (2) fertilization or irrigation used to boost production on native grassland, or on grasslands in fish and wildlife habitat, (3) reseeding native grasslands, pasturelands, or grasslands in fish and wildlife habitat to reintroduce the desired species, (4) extensive replanting, plugging, or addition of soil containing propagules on wetlands, (5) extensive replanting in woodlands or shelterbelts, (6) any significant surface modifications which redisturb the topsoil, and (7) any change in land use that requires a seed mix modification to support the intended land use.

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) provide for the approval of selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, that would not extend the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area.

The Director finds that North Dakota's proposed definition of augmentation practices is consistent with the Federal regulations concerning normal husbandry practices at 30 CFR 816.116(c)(4) and 817.116(c)(4). The Director approves the proposed revisions and removes the required amendment at 30 CFR 934.16(i).

i. *Chapter II, Section C, NRCS consultation regarding methods for measuring productivity on prime farmlands and approval for yield determination methods on prime farmlands.* At 30 CFR 934.16 (w) and (x), OSM required that North Dakota revise its revegetation document to submit evidence of, respectively, (1) NRCS (formerly the Soil Conservation Service) consultation regarding the approved methodologies for measuring productivity on prime farmlands and (2) NRCS concurrence regarding the approved methods for determining yield standards for prime farmlands (Finding Nos. 28.a and b, 57 FR 807, 823, January 9, 1992).

North Dakota submitted with its revised amendment a December 15, 1994, letter from the NRCS in which the NRCS stated that it had reviewed and concurred with standards and sampling procedures for proving reclamation success on prime farmlands that are outlined in North Dakota's revegetation document. The NRCS identified its Soil Tech Note 2, dated 1987, as the most current reference guideline concerning productivity indexes and agreed that the sampling designs are adequate. The NRCS also stated that the use of small grains to prove production is applicable in the area because corn or other deep rooting crops are not generally grown in west and west central North Dakota.

The Federal regulation at 30 CFR 823.15(b)(2) requires, in part, that prime farmland soil productivity shall be measured using statistically valid sampling techniques that are approved by the regulatory authority in consultation with the NRCS. The Federal regulation at 30 CFR 823.15(b)(6) requires that the reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland and that where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops. The Federal regulation at 30 CFR 823.15(b)(7) requires the NRCS concurrence regarding the approved methods for determining yield standards for prime farmlands.

Based on the December 15, 1994, NRCS letter to North Dakota, the Director finds that North Dakota's revegetation document revisions are no less effective than the Federal regulations at (1) 30 CFR 823.15(b), concerning consultation and concurrence with the NRCS for prime farmlands, and (2) 30 CFR 823.15(b)(6), concerning the use of small grains (spring wheat) rather than corn or other deep rooting crops to prove production. The Director removes the required amendments at 30 CFR 934.16 (w) and (x).

3. Substantive Revisions to North Dakota's Revegetation Document Proposed as State Initiatives

a. *Chapter II, Section C, demonstration of productivity prior to bond release on prime farmland.* North Dakota proposed to revise Chapter II, Section C, to require for third-stage (equivalent to the Federal program's phase II) bond release on prime farmland, that productivity must be equal to or greater than that of the approved reference area or standard with 90 percent statistical confidence. This is identical to the requirement for third-stage bond release on prime farmland in North Dakota's rule at North Dakota Administrative Code (NDAC) 69–05.2–22–07(3)(c). The revegetation document at Chapter 11, Section C and North Dakota's rule at NDAC 69–05.2–22–07(4)(d) require for final or fourth-stage (equivalent to the Federal program's phase III) bond release on prime farmland that productivity equal to or greater than the standard must be demonstrated in each of the last 3 consecutive growing seasons of the responsibility period. In addition, North Dakota's rule at NDAC 69–05.2–26–05(3)(c) requires that the measurement period for determining crop production is that specified in NDAC 69–05.2–22–07(4)(d) for fourth-stage bond release on prime farmland described above).

The Federal regulations at 30 CFR 800.40(c)(2) require that no part of a phase II bond shall be released until soil productivity for prime farmland has returned to the 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 Act and 30 CFR Part 823. The Federal regulations at 30 CFR 823.15(b)(3) require that the measurement period for determining average annual crop production (yield) shall be a minimum of 3 crop years prior to release of the operator's performance bond. The Federal regulations at 30 CFR 823.15(b)(5) require that restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices. Therefore, 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, clearly require a successful demonstration of productivity using 3 years of data prior to phase II bond release (equivalent to North Dakota's third-stage bond release).

North Dakota's existing rule at NDAC 69–05.2–22–07(3)(c) and proposed revision in Chapter II, Section C in its revegetation document require that a permittee demonstrate productivity on prime farmland at third-stage bond release. However, North Dakota's existing rules at NDAC 69–05.2–22–07(4)(d) and 69–05.2–26–05(3)(c) and Chapter II, Section C in its revegetation document require that the 3-year measurement period for making a demonstration of productivity occur prior to fourth-stage bond release. The

Director finds that North Dakota's rules at NDAC 69–05.2–26–05(3)(c) and 69–05.2–22–07(3)(c), and its revegetation document at Chapter II, Section C, concerning the requirement for third-stage bond release on prime farmland, to the extent that they do not require the permittee to demonstrate the success of productivity on prime farmland with 3 years of data, are less effective than the Federal regulations at 30 CFR 800.40 and 823.15. The Director approves the revision proposed in Chapter II, Section C of the revegetation document that requires prime farmland productivity to be equal to or greater than that of the approved reference area or standard with 90 percent statistical confidence prior to third-stage bond release. However, the Director also requires that North Dakota further revise Chapter II, Section C in the revegetation document and its rules at NDAC 69–05.2–26–05(3)(c) and 69–05.2–22–07(3)(c) to require that the permittee demonstrate restoration of productivity on prime farmland using 3 crop years at third-stage bond release. OSM recommends that North Dakota then revise NDAC 69–05.2–22–07(4)(d) to delete the fourth-stage bond release requirement on prime farmland for successful productivity during the last 3 consecutive growing seasons.

b. *Chapter II, Section E, demonstration of diversity, seasonality, and permanence prior to fourth-stage bond release on tame pastureland.* North Dakota proposed to revise Chapter II, Section E, to remove existing discussions concerning the evaluation of reclaimed vegetation for diversity, seasonality, and permanence on areas developed for use as tame pastureland. However, North Dakota also proposed to revise Chapter II, Section E to require that (1) all species used in determining ground cover must be perennial species not detrimental to the land use and (2) all species included in the approved seed mixture must be present at the time of final bond release.

The Federal regulations at 30 CFR 816.111(a)(1) and 817.111(a)(1) require the permittee to establish on regraded areas and on all other disturbed areas (except water areas and surface areas of roads that are approved as part of the postmining land use) a vegetative cover that is in accordance with the approved permit and reclamation plan and that is diverse, effective, and permanent. Additionally, the Federal regulations at 30 CFR 816.111(b)(2) and 817.111(b)(2) require that the reestablished plant species have the same seasonal characteristics of growth as the original vegetation. Finally, the Federal regulations at 30 CFR 816.116(a) and 817.116(a) require that the success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of Section 816.111.

Because North Dakota proposed that only perennial species can be used in determining the success of ground cover, North Dakota has proposed in its revegetation document, in effect, to require an evaluation of permanence. North Dakota also proposed that all species included in the approved seed mixture must be present at the time of final bond release. Because the approved seed mix is designed to attain the diversity and seasonality required to support the approved postmining land use, North Dakota has proposed in its revegetation document, in effect, to require an evaluation of diversity and seasonality on land reclaimed for use as tame pastureland. Therefore, although North Dakota proposed deletion of existing discussions concerning diversity, seasonality, and permanence on tame pastureland, it also proposed to include requirements for evaluation of diversity, seasonality, and permanence that are consistent with the Federal regulations at 30 CFR 816.111(a)(1) and (b)(2), 817.111(a)(1) and (b)(2), 816.116(a), and 817.116(a).

Therefore, the Director finds that North Dakota's proposed revisions in Chapter II, Section E of the revegetation document, concerning the evaluation of diversity, seasonality, and permanence on land reclaimed for use as tame pastureland, are no less effective than the Federal regulations at 30 CFR 816.111 (a)(1) and (b)(2), 817.111 (a)(1) and (b)(2), 816.116(a), and 817.116(a), and approves the proposed revisions.

c. *Chapter II, Section E, development of a productivity standard on tame pastureland using 50 percent of the yield of a suitability group or soil series most similar to an unrated soil series.* North Dakota proposed to revise Chapter II, Section E to allow estimated yield values to be used for those soil groups that are not suited for pasture or hayland. North Dakota proposed that these yield values be derived using 50 percent of the yield of the suitability group or soil series most similar to them. Fifty percent of the yield was selected, based on NRCS recommendations, since these soils are rated non-suitable due to machinery limitations and erosion rather than productivity potential.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that revegetation success standards include criteria representative of unmined lands to evaluate the appropriate vegetation parameters of ground cover, production, or stocking.

In response to OSM's September 9, 1994, issue letter, North Dakota submitted a December 15, 1994, NRCS letter in which the NRCS stated that it has recommended estimating productivity values for soil groups not suited for pasture or hayland by using 50 percent of the yield of the suitability group or soil series most similar to the unrated one. The NRCS further stated that most of these areas are steep, shallow to bedrock, or strongly saline and that there are minimal acreage of these areas in the coal mining region. Finally, the NRCS stated that although it has not compiled data to support using the 50 percent productivity level, it believes that using 50 percent of the productivity level of similar nonrated soils adequately describes production on these sites.

Based on the December 15, 1994, NRCS letter to North Dakota, the Director finds that North Dakota's proposed method for estimating yields on unrated soils reclaimed for use as tame pastureland is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) and approves the proposed revision.

d. *Chapter II, Section H, classification of wetland vegetation on reclaimed lands developed for use as fish and wildlife habitat.* North Dakota proposed to revise Chapter II, Section H, concerning wetlands on land reclaimed for use as fish and wildlife habitat, to delete the State wetland classification system of temporary, seasonal, semi-permanent, and permanent, and to add the classification system for premining assessments described by Stewart and Kantrud (Classes I through VI). In addition, North Dakota proposed to add the requirement that the total acreage of postmine wetland, including Class I and II's, prior to final bond release for the mine must equal the total premine acreage. North Dakota did not propose to revise any of the standards applicable to evaluating the success of reclaimed wetland vegetation.

The Federal regulations at 30 CFR 816.111, 816.116, 817.111, and 817.116, concerning requirements for success of revegetation, including requirements for revegetation success on land reclaimed for use as fish and wildlife habitat, do not include requirements specific to wetland vegetation. North Dakota's proposed revisions concerning wetland classification and replacement go beyond the requirements of, and are not inconsistent with, the Federal

regulations at 30 CFR 816.111, 816.116, 817.111, and 817.116.

Therefore, the Director finds that North Dakota's proposed revisions in Chapter II, Section H of the revegetation document, concerning wetlands on land reclaimed for use as fish and wildlife habitat, are no less effective than the Federal regulations at 30 CFR 816.111, 816.116, 817.111, and 817.116, and approves the proposed revisions.

e. *Chapter II, Section I, requirements for revegetation success on reclaimed lands developed for use as recreation, residential, industrial, and commercial.* North Dakota proposed to revise its revegatation document by creating a new Section I in Chapter II. Proposed Section I includes the requirements for success of revegatation on lands reclaimed for use as recreation, residential, and industrial and commercial. North Dakota proposed to require on areas developed for recreation, residential, and industrial and commercial land uses, for both third and fourth-stage bond release, establishment of vegetation sufficient to control erosion and documentation showing that the areas are not contributing suspended solids to streamflow or runoff outside the permit area. North Dakota proposed (1) a technical standard for establishment of revegetation, measured with a point frame, of either 73 percent total cover based on basal hits or 83 percent total cover based on first hits, (2) the requirement that live cover included in the standard must be perennial species not detrimental to the land use, and (3) that either standard must be achieved with 90 percent statistical confidence. North Dakota's rules at NDAC 69–05.2–22–07(4)(j) require that within 2 years after completion of grading or soil replacement, the ground cover of living plants must not be less than required to control erosion on areas to be developed for recreation, water areas, residential, or industrial and commercial uses.

For areas developed for residential, or industrial and commercial land uses, the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) require that the vegetative ground cover shall not be less than that required to control erosion.

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, in part, that success of revegetation be determined on the basis of tree and shrub stocking and vegetative ground cover and include the requirements that (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.

The Director finds that proposed Chapter II, Section I in North Dakota's revegetation document, with respect to areas developed for residential or industrial and commercial land uses, is no less affective than the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4).

However, on areas developed for a recreation land use, neither the North Dakota rule nor its revegetation document require revegetation success standards for tree and shrub stocking and vegetative ground cover based on consultation with and approval from the State agencies responsible for the administration of forestry and wildlife programs. Therefore, with respect to areas developed for a recreation land use, the Director finds that the North Dakota rules at NDAC 69–05.2–22–07(4)(j) and Chapter II, Section I in the revegetation document are less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3). With the exception that Chapter II, Section I does not include complete requirements for measuring the success of revegetation on land reclaimed for use as recreation, the Director approves the revegetation success standards and sampling techniques proposed by North Dakota in Chapter II, Section I of its revegetation document for areas developed for recreation, residential, or industrial and commercial land uses. With respect to areas developed for a recreation land use, the Director requires that North Dakota (1) revise its rule at NDAC 69–05.2–22–07(4)(j) and Chapter II, Section I in its revegetation document to require tree and shrub stocking standards that (a) have been approved by the State agencies responsible for forestry and wildlife programs and (b) meet all other requirements for tree and shrub standards included in 30 CFR 816.116(b)(3), and (2) provide evidence of consultation with and approval from the State agencies responsible for forestry and wildlife programs for the ground cover standard, concerning a recreation land use, proposed in Chapter II, Section I.

f. *Chapter III, Section C, sample design and sample size adequacy.* North Dakota proposed to revise Chapter III, Section C, to (1) require that the determination of an adequate sample size include an initial sampling to obtain estimates of the mean and variance of each site type or reference area; (2) specify a minimum number of samples when hand sampling to determine (a) total production and cover on native grassland and tame pastureland, (b) production on cropland, or (c) total cover; and (3) require that the mean and variance derived from the initial sampling be used to calculate adequate sample size using (a) a two-stage sampling procedure, (b) a procedure using the standard error as a percentage of the mean, or (c) a procedure described for comparing two different populations (e.g., reference area and reclaimed area). Each of these procedures for determining sample size are based on either a normal or binomial distribution of the population when parametric statistics are used to evaluate the revegetation data collected from the reclaimed area.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that the sampling techniques for measuring revegetation success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

North Dakota's proposed revisions of Chapter III, Section C, concerning sample design, are consistent with the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) in that North Dakota has clearly required that all sampling techniques shall use a 90 percent statistical confidence level.

North Dakota also proposed to revise Chapter III, Section C, concerning sample design to state that, in some cases, the sample size derived from a formula may appear to be unreasonably large due to non-parametric or non-normal distributions and that North Dakota will evaluate such cases and establish a maximum sample size.

The distribution of (1) vegetative cover in the arid west and (2) shrub density throughout the west often do not exhibit normal or binomial characteristics, and the use of non-parametric statistics may be appropriate for evaluation of the revegetation data collected from these reclaimed environment. Because North Dakota's proposed requirement that all sampling techniques use a 90 percent statistical confidence level applies whether

parametric or non-parametric statistics are used to evaluate the data collected, North Dakota's provision concerning non-parametric statistics is consistent with the requirements for measuring for success of revegetation with 90 percent statistical confidence in the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2).

Therefore, the Director finds that North Dakota's proposed revisions of Chapter III, Section C in its revegetation document, concerning sampling design, are no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2), and approves the proposed revisions.

g. *Chapter III, Section D, the sampling procedures allowed for demonstration of productivity of annual crops on cropland and prime farmland.* North Dakota proposed to revise Chapter III, Section D, to provide methods for the demonstration of production on areas reclaimed for production of annual crops (cropland and prime farmland). North Dakota proposed to allow the use of (1) entire field harvest; (2) combined sampling, where sampling units or strips must be distributed throughout the entire field and the number of strips needed must be determined using a sample adequacy formula that reflects 90 percent statistical confidence; (3) hand sampling, which are limited to areas where the cropland reference area standard or the NRCS cropland technical standard with a control area used for climatic correction is used, and where both the reclaimed and the reference or control areas are hand sampled in the same manner (the number of samples needed must be determined using a sample adequacy formula that reflects 90 percent statistical confidence); or (4) representative strips.

With respect to the use of representative strips, North Dakota proposed to require at least three representative strips of adequate size must be established which must reflect the variability in soil redistribution thickness, landscape forms, and reclamation age occurring in the larger reclaimed areas they represent. In addition, each strip must extend across the entire tract they represent and, to the extent possible considering the above factors, should be equally spaced across the entire tract. The total acreage of the representative strips which must be cropped each year must, at a minimum, equal ten percent of the entire reclaimed tract they represent. Separate representative strips must be established for each landowner, unless the landowner agrees that other representative strips having the same characteristics are adequate to represent his or her reclaimed land. A map showing the location of the strips must be approved by North Dakota prior to final selection. North Dakota required that the methods used to harvest the representative areas must reflect a 90 percent statistical confidence interval and recommended that the representative strips be entirely harvested to obtain a single yield value. North Dakota also submitted a NRCS letter, dated December 15, 1994, which documented NRCS consultation regarding the proposed sampling techniques. The NRCS stated that it agreed that the sampling designs were adequate, but recommended whole-field harvest to eliminate any question of accuracy.

The Federal regulations at 30 CFR 816.116(a) (1) and (2) and 817.116(a) (1) and (2) require that statistically valid sampling techniques be included in the approved program and that the sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). For prime farmland, the Federal regulations at 30 CFR 823.15(b)(2) require that soil productivity be measured on a representative sample or on all of the mined and reclaimed area and that a statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the regulatory authority in consultation with the NRCS (formerly the Soil Conservation Service).

The Director finds that North Dakota's proposed methods for the demonstration of production on areas reclaimed for production of annual crops (cropland and prime farmland), including entire field harvest, combined sampling, and hand sampling, Chapter III, Section D are no less effective than the requirements of 30 CFR 816.116(a)(2) and 817.116(a)(2).

Because North Dakota (1) proposed criteria for establishment of representative strips within the reclaimed area that should ensure that the strips will be representative at a 90-percent statistical confidence level of the total reclaimed prime farmland bond release area (cropland and prime farmland), and (2) submitted evidence of consultation with the NRCS regarding the demonstration of productivity on prime farmland, the Director finds that the representative strips method for the demonstration of production on areas reclaimed for production of annual crops (cropland and prime farmland) is no less effective than the requirements of 30 CFR 816.116(a)(2), 817.116(a)(2), and 823.15(b)(2).

Based on the above discussion, the Director approves the proposed sampling procedures allowed for demonstration of productivity of annual crops on cropland and prime farmland in Chapter III, Section D of North Dakota's revegetation document.

h. *Chapter III, Section D, sample adequacy requirements for demonstration of woody plant density.* North Dakota proposed to revise Chapter III, Section D in its revegetation document to require, when using the quadrat sampling method to measure success of woody plant density, that randomly placed quadrats be used to obtain density counts and to recommend that permanent sampling plots be established within each planting. North Dakota proposed to delete the requirement that sampling of total density proceed until the coefficient of variation is less than or equal to 20 percent, and add the requirements that enough samples must be taken to (1) reflect the population mean with 90 percent statistical confidence and (2) demonstrate that the number of woody plants established equals or exceeds the approved standard with 90 percent statistical confidence.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require, in part, that the sampling techniques for measuring success of stocking shall use a 90-percent statistical confidence interval.

As discussed in Finding No. 2.c above, OSM is approving North Dakota's proposed requirement that enough samples must be taken to demonstrate that the number of woody plants established equals or exceeds the approved standard with 90 percent statistical confidence.

The Director finds that the revisions proposed in Chapter III, Section D, concerning the sampling procedure used to demonstrate the success of woody plant density, are no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) and approves the proposed revisions.

i. *Appendix A, reinforcement interseeding on native grassland as a normal conservation practice.* North Dakota proposed to revise Appendix A, concerning normal conservation practices on lands reclaimed for use as native grassland, to allow restricted reinforcement interseeding, described below, to modify species composition or reestablish certain species during establishment of the revegetated stand. North Dakota referenced the NRCS July 14, 1989, Technical Note, ND–12 Rev., entitled ''Guidelines for Grass/Legume Stand Evaluation,'' and used this guideline to develop the requirements

for an evaluation of species establishment and the need for reinforcement interseeding.

North Dakota proposed to require a record of the frequency measurement of the established plants and that the frequency of species seeded must indicate that at least 50 percent of the seeded species are becoming established. A single reinforcement interseeding may be made prior to year 4 of the bond liability period. At year 4, the permittee may evaluate the establishment of species. If the permittee can demonstrate that the revegetated stand has not become established, one more reinforcement interseeding would be allowed in the spring of year 5. North Dakota proposed to require that any interseeding after year 5 would restart the liability period.

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allows the regulatory authority to select normal husbandry practices if such practices are expected to continue as part of the postmining land use or if discontinance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Such practices must be normal husbandry practices within the region.

In response to OSM's September 9, 1994, issue letter, North Dakota submitted a copy of the NRCS July 14, 1989, Technical Note, ND–12 Rev. This document states that, in the case of weak or spotty stands, reinforcement seeding or spot seeding should be considered during evaluation of stand establishment. As set forth in Chapter II, Section D of North Dakota's revegetation document, the revegetation stand would have to meet the revegetation success standards for production, cover, diversity, seasonality, and performance during the last 2 consecutive years of the liability period. Therefore, the permittee would have to demonstrate prior to bond release that discontinuance of interseeding would not reduce the probability of permanent revegetation success.

Based on the NRCS document and North Dakota's proposal that only one interseeding prior to year 4 of the 10 year liability period and one conditional interseeding in year of the liability period would be allowed, the Director finds that North Dakota's proposal for reinforcement interseeding on reclaimed native grasslands is consistent with the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) and approves it.

j. *Appendix A, plantings of trees and shrubs on agricultural land as a normal conservation practice.* North Dakota proposed to revise the discussion of normal conservation practices in Appendix A to include the voluntary plantings of trees and shrubs on agricultural land at the request of the landowner or to enhance fish and wildlife habitat as a normal conservation practice.

There is no provision in the Federal program for the planting of trees and shrubs on agricultural land at the request of the landowner, as proposed by North Dakota. The Federal regulations at 30 CFR 816.97(h) and 817.97(h) and North Dakota's rule at NDAC 69–052–13–08(5)(j) require that a permittee, when the postmining land use is cropland, and where appropriate for crop-management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area. The provision for voluntary planting of trees and shrubs on agricultural land either at the landowner's request or to enhance fish and wildlife habitat is not inconsistent with the Federal regulations at 30 CFR 816.97(h) and 817.97(h) and North Dakota's rule at NDAC 69–052–13–08(5)(j).

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) provide for the approval of selective husbandry practices that would not extend the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. The term ''normal conservation practice'' used by North Dakota in its revegetation document means the same thing as the term ''normal husbandry practice'' used in the Federal regulations.

The use of field windbreaks, or plantings of trees and shrubs on agricultural land, is a common agricultural practice in North Dakota. As discussed above, the planting of trees and shrubs to enhance fish and wildlife habitat where appropriate for crop management on areas with a postmining land use of cropland is recognized in the Federal program as a desirable enhancement of an agricultural land use.

For these reasons, the Director finds that North Dakota's proposed allowance in Appendix A for the planting of trees and shrubs on agricultural land as a normal conservation practice is consistent with the Federal regulations at 30 CFR 816.97(h), 816.116(c)(4), 817.97(h), and 817.116(c)(4), 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 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.

a. *NRCS.* On April 14, 1994, the U.S. NRCS responded with the following comments (administrative record No. ND–U–09).

With respect to reference areas used to demonstrate success of land reclaimed for use as native grassland, the NRCS commented that

> [l]ong term ungrazed reference areas eventually may lose integrity in representing characteristic native plant communities. Such areas eventually tend to become invaded by Kentucky Blue grass, excess litter accumulates, wood or other dominating overstory may increase, and species diversity decreases. Grazing and/or fire historically influenced the character of native prairie ecosystems.

North Dakota's rules at NDAC 69–05.2–01–02 define a ''reference area'' to mean, in part, a land unit maintained under appropriate management. North Dakota's revegetation document at Chapter II, Section D includes the requirements for measuring success of revegetation on areas reclaimed for use as native grassland. North Dakota requires that the range condition of the reference area be similar to that of the corresponding premine range site. North Dakota also recommends that, because prior to mining disturbance a rancher may have used the land more intensively than if the goal had been sustained yields for several years, management practices which will maintain or improve the condition of the reference area be used during the liability area and that management of the reference area should be equivalent to that required for the approved postmining land use of the permit area. Therefore, because North Dakota's rules and revegetation document require proper management of the reference area used to demonstrate success of revegetation on lands reclaimed for use as native grassland, the Director is not requiring that North Dakota further

revise the revegetation document in response to this comment.

With respect to production on land reclaimed for use as native grazingland, the NRCS commented that

> [NRCS] production values represent potential for given range sites and may not be representative of the actual pre-mined yields. Range condition would influence yields on both the reference area and pre-mined area.

North Dakota's revegetation document at Chapter II, Section D requires an evaluation of the range condition, for all range sites and the reference area, according to the methodology specified by the NRCS. And as discussed above, North Dakota requires proper management of the reference area for attainment of the postmining land use; in addition, the reference area must be representative of the geology, soil, slope, and vegetation in the permit area. While the permittee may elect to use either NRCS estimated yield values or actual yield values from the reference area to determine a productivity standard, North Dakota requires that the permittee demonstrate restoration of the production potential of the soils in the permit area. For these reasons, the Director is not requiring that North Dakota further revise its revegetation document in response to these comments.

With respect to NRCS pasture and hayland yields, NRCS commented that

> [c]urrently, pasture and hayland yields are under evaluation for revision. Some yields are apparently too high. Revisions will be based on available research data.

North Dakota's revegetation document at Chapter II, Section E requires the use of NRCS estimates yield figures for setting a technical productivity standard by which the success of revegetation will be measured on land reclaimed for use as pastureland. North Dakota also states in its revegetation document at Chapter II, Section B, concerning data sources, that when new data are published by the NRCS, updated tables will be forwarded to the mining companies and OSM. The permittee will therefore be using the most current NRCS estimated yields to determine any technical standards used in demonstrating the success of productivity on lands reclaimed for use as tame pastureland. Where the permittee elects to use a reference area to determine the productivity standard, the actual yield measurements will be used. For these reasons, the Director is not requiring that North Dakota further revise the revegetation document in response to this comment.

On May 22, 1995, the U.S. NRCS responded that it had no comments on the revised proposed amendment (administrative record No. ND–U–19).

b. *Other Federal agencies.* The U.S. Mine Safety and Health Administration (MSHA) responded on March 16, 1994, that the proposed amendment did not conflict MSHA regulations (administrative record No. ND–U–04).

The U.S. Fish and Wildlife Service responded on March 29, 1994, and June 1, 1995, that (1) the proposed amendment was logical and reasonable and (2) it did not anticipate any significant impacts to fish and wildlife resources as a result of the proposed amendment (administrative record Nos. ND–U–07 and ND–U–21).

The U.S. Bureau of Mines responded on April 11, 1994, that it had no comments on the proposed amendment (administrative record No. ND–U–08).

The U.S. Rural Economic and Community Development responded on May 23, 1994, that it had no comments on the proposed amendment (administrative record No. ND–U–20).

The U.S. Agricultural Research Service, Northern Great Plains Research Laboratory, responded on May 30, 1994, that it had no comments on the proposed amendment (administrative record No. ND–U–22).

The U.S. Army Corps of Engineers responded on June 5, 1995, that it found the proposed amendment to be satisfactory (administrative record No. ND–U–24).

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.*).

None of the revisions that North Dakota proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. ND–U–03. EPA responded on March 21, 1994, that it had no comments on the proposed amendment (administrative record No. ND–U–06).

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

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, North Dakota's proposed amendment as submitted on February 17, 1994, and as revised and supplemental with additional explanatory information on December 21, 1994, and May 11, 1995.

With the requirement that North Dakota further revise its rules and/or the revegetation document, the Director approves, as discussed in Finding No. 3.a, Chapter II, Section C, the requirements to demonstrate the success of productivity prior to third-stage bond release on land reclaimed for use as prime farmland, and Finding No. 3.e, Chapter II, Section I, the requirements to demonstrate the success of revegetation on areas developed for recreation, residential, or industrial and commercial land uses.

The Director approves, as discussed in: Finding No. 1, the proposed revisions in the revegetation document not otherwise specifically discussed, Finding Nos. 2.a. through 2.i, various revisions in the revegetation document made in response to required amendments; Finding No. 3.b, Chapter II, Section E, the required evaluation of reclaimed vegetation for diversity, seasonality, and permanence on areas developed for use as tame pastureland; Finding No. 3.c, Chapter II, Section E, the use of estimated yields to develop a productivity standard for soils that are not rated for use as pastureland on land reclaimed for use as tame pastureland; Finding No. 3.d, Chapter II, Section H, wetland classification and replacement requirements; Finding No. 3.f, Chapter III, Section C, sample design and sample size adequacy; Finding No. 3.g, Chapter III, Section D, the use of entire field harvest, combined sampling, hand sampling, or representative strips as procedures for demonstrating productivity on land reclaimed for use as cropland or prime farmland; Finding No. 3.h, Appendix A, the use of restricted interseeding as a normal conservation practice on land reclaimed for use as native grassland; and Finding No. 3.i, Appendix A, the voluntary plantings of trees and shrubs on agricultural land at the request of the landowner or to enhance fish and wildlife habitat as a normal conservation practice.

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.

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 revegatation 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 it 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

Dakota shall 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.

[FR Doc. 95–17166 Filed 7–13–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Reg. 37–132]

Air Force Privacy Act Program

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is deleting an exemption rule. The rule was for the system of records notice F030 AF LE A, entitled Equal Opportunity in Off-Base Housing. The notice has already been amended to reflect this change.

EFFECTIVE DATE: July 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Turner at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, 32 CFR part 806b is amended as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

Appendix C to Part 806b [Amended]

2. Appendix C to part 806b is amended by removing and reserving paragraph (b)(8).

Dated: June 27, 1995.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–17110 Filed 7–13–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC36

Appalachian National Scenic Trail; Revisions to Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Interim rule.

SUMMARY: The National Park Service (NPS) is adopting this interim rule to allow the continuation of an existing hang gliding activity on the Appalachian Trail while the agency develops a special regulation to address the activity through public notice and comment rulemaking. The interim rule will allow the Appalachian Trail Project Manager (Project Manager) to renew the Special Use Permit (SUP) of the Water Gap Hang Gliding Club. The Water Gap Hang Gliding Club (WGHGC) has been undertaking this activity at Kirkridge on the AT for over twenty years and the WGHGC's SUP recently expired.

EFFECTIVE DATE: This rule is effective July 14, 1995 and will expire on December 31, 1995. Written comments will be accepted through September 12, 1995.

ADDRESSES: Comments should be addressed to: Project Manager, Appalachian Trail Project Office, National Park Service, c/o Harpers Ferry Center, Harpers Ferry, WV 25425.

FOR FURTHER INFORMATION CONTACT: Donald T. King, Project Manager, Appalachian Trail Project Office, National Park Service, c/o Harpers Ferry Center, Harpers Ferry, WV 25425.

SUPPLEMENTARY INFORMATION:

Background

The Appalachian National Scenic Trail (AT) is a north-south hiking trail that stretches nearly 2,200 miles from Maine to Georgia along the crest of the Appalachian Mountains. The AT is administered by the Secretary of the Interior, National Park Service, as part of the National Trails System.

At its inception, the AT traversed mostly private lands. Use of the private lands was enjoyed not only by hikers, but also by other types of outdoor enthusiasts. In the late 1970's, hang gliders in the area of Fox Gap, Pennsylvania, with the permission of the landowner, were launching from the ridgetop known as Kirkridge, along the Appalachian Mountains. The hang gliders formally organized and established the WGHGC for the purpose of promoting the safety of hang gliding and addressing liability issues.

Originally, the WGHGC used the area with the expressed permission of the landowner and, after the area was acquired by the NPS, the WGHGC requested permission from the NPS and was issued a SUP to continue using the AT area as a launch site. The WGHGC has proven by past conduct to be a good steward of these public lands. The WGHGC has assumed shared responsibility for maintenance of this popular section of the AT along with the local trail club. The WGHGC has a published maintenance schedule for its individual club members to provide trash pick-up in the general area. The WGHGC works with the local trail club to protect the resource qualities of the area and to ensure the area is safe for public use by other outdoor enthusiasts. The private landowners adjacent to the site have endorsed the continued use of the area by the WGHGC. Based upon a review of the past years of use by WGHGC and the experience of others (including the landowners and local hiking club) in the area, the NPS has determined that there are no known adverse impacts caused by the WGHGC activities.