(B) * * *

(*3*) * * * Withdraw 5 days prior to slaughter those products sponsored by Nos. 000069, 017144, 057561, and 059130 in § 510.600(c) of this chapter. * * *

(C) * * *

(*3*) * * * Withdraw 5 days prior to slaughter those products sponsored by Nos. 000069, 017144, 057561, and 059130 in § 510.600(c) of this chapter. * * *

(iii) * * *

(C) * * * Administer up to 14 days; do not use for more than 14 consecutive days; withdraw 5 days prior to slaughter those products sponsored by Nos. 000069 and 059130. * * *

(iv) * * *

(C) * * * A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. A milk discard period has not been established for this product in lactating dairy cattle. Do not use in female dairy cattle 20 months of age or older.

* * * * *

Dated: September 13, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–25811 Filed 10–7–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–033–FOR]

North Dakota Abandoned Mine Land Reclamation Plan

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 abandoned mine land reclamation (AMLR) plan (hereinafter, the ''North Dakota plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions to and the addition of provisions pertaining to contractor eligibility, procurement procedures, contract procedures, contract and procurement policies, and the State agency structural organization. The amendment was intended to revise the North Dakota plan to meet the requirements of the corresponding Federal regulations and be consistent with SMCRA, and to improve operational efficiency.

EFFECTIVE DATE: October 8, 1996.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–6550, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Plan

On December 23, 1981, the Secretary of the Interior approved the North Dakota plan. General background information on the North Dakota plan, including the Secretary's findings and the disposition of comments, can be found in the December 23, 1981, Federal Register (46 FR 62253). Subsequent actions concerning North Dakota's plan and plan amendments can be found at 934.25.

II. Proposed Amendment

By letter dated September 20, 1995, North Dakota submitted a proposed amendment to its plan (administrative record No. ND–X–02) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment in response to a September 26, 1994, letter (administrative record No. ND–X–01) that OSM sent to North Dakota in accordance with 30 CFR 884.15(b), and at its own initiative. The provisions of the North Dakota plan that North Dakota proposed to revise or add were: North Dakota Century Code (NDCC) 38–14.2–03(14), bidder eligibility for abandoned mine land (AML) contracts; procurement procedures; contract procedures; contract and procurement policies 2–02–81(5) and 2–01–81(5); and the North Dakota Public Service Commission (PSC) organizational chart.

OSM announced receipt of the proposed amendment in the October 16, 1995, Federal Register (60 FR 53564), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–X–05). Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 15, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions at NDCC 38–14.2–03(14), bidder eligibility, and section IV.C.5 of the North Dakota PSC procurement procedures, non-competitive negotiation. OSM notified North Dakota of the concerns by letter dated December 7, 1995 (administrative record No. ND–X–04). North Dakota responded in a letter dated April 30, 1996, by submitting additional explanatory information (administrative record No. ND–X–09). North Dakota proposed additional explanatory information for NDCC 38–14.2–03(14), contractor responsibility, and procurement procedure section IV.C.5., sole-source procurement.

Based upon the additional explanatory information for the proposed plan amendment submitted by North Dakota, OSM reopened the public comment period in the May 21, 1996, Federal Register (61 FR 25425, administrative record No. ND–X–18). Because no one requested a public hearing or meeting, none was held. The public comment period closed on June 20, 1996.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed plan amendment submitted by North Dakota on September 20, 1995, and as supplemented with additional explanatory information on April 30, 1996, meets the requirements of the corresponding Federal regulations and is consistent with SMCRA. Thus, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to North Dakota's Plan Provisions

North Dakota proposed revisions to the following previously-approved plan provisions that are nonsubstantive in nature and consist of minor editorial and recodification changes (corresponding Federal regulation provisions are listed in parentheses):

North Dakota PSC Procurement Procedures (30 CFR 884.13(d)(3)), title and table of contents, and

North Dakota PSC Contract Procedures (30 CFR 884.13(d)(3)), title and table of contents.

Because the proposed revisions to these previously-approved plan provisions are nonsubstantive in nature, the Director finds that they meet the requirements of the Federal regulations. The Director approves the proposed revisions to these plan provisions.

2. NDCC 38–14.2–03(14), Bidder Eligibility for Abandoned Mine Land Contracts

North Dakota proposed to add NDCC 38–14.2–03(14) to require that:

> Every successful bidder for an AML contract must be eligible based on available information concerning Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation

orders, delinquent civil penalties issued pursuant to Section 518 of the Surface Mining Control and Reclamation Act of 1977, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal an State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

The Federal regulations at 30 CFR 874.16 for coal and 875.20 for noncoal provide that to receive AML funds, every successful bidder for an AMI contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations and that bidder eligibility must be confirmed by OSM's automated Applicant/Violator System for each contract to be awarded.

At NDCC 38–14.2–03(14), North Dakota proposed clearance criteria that must be met before an AML contract may awarded to a successful bidder for a contract; however, North Dakota's proposed statute lacks the specific criteria of the Federal regulations concerning eligibility.

North Dakota proposed that ''[e]very successful bidder for an AML contract must be eligible based on available information * * *.'' North Dakota's use of the phrase ''must be eligible'' does not indicate what the successful bidder must be eligible for. The Federal regulations at 30 CFR 874.16 and 875.20 require that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

Secondly, North Dakota proposed that ''the successful bidder for an AML contract must be eligible based on available information concerning Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties issued pursuant to Section 518 of the Surface Mining Control and Reclamation Act of 1977, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.''

This list of eligibility criteria does not include all of the criteria of the corresponding Federal regulation at 30 CFR 773.15(b)(1) (as published October 28, 1994, 59 FR 54306), which is referenced in 30 CFR 874.16 and 875.20. The Federal regulation at 30 CFR 773.15(b)(1) includes, in addition to the criteria included in North Dakota's proposed statute, violations ''of the Act [(SMCRA)], any Federal rule or regulation promulgated pursuant thereto, [and of] a State program.'' Although North Dakota includes cessation orders in its list, it does not include Federal and State notices of violations and any other ''written notification from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the Act; any Federal rule or regulation promulgated pursuant thereto; [or a] State program,'' which are included in the definition of ''violation notice'' at 30 CFR 773.5.

North Dakota's statute does not include the ownership and control provisions of the Federal regulations. 30 CFR 874.16 and 875.20, through their referencing of 30 CFR 773.15(b)(1), require that a contract may not be awarded to a successful bidder until the regulatory authority determines that any surface coal mining and reclamation operation owned by the bidder or by any person who owns or controls the bidder is not in violation of the laws, rules, and regulations addressed in the preceding paragraph.

Finally, North Dakota indicated at proposed NDCC 38–14.2–03(14) that ''[e]very successful bidder for an AML contract must be eligible based on 'available information','' but the proposed statute does not indicate where it will obtain this ''available information.'' The Federal regulations at 30 CFR 874.16 and 875.20 require that ''[b]idder eligibility must be confirmed by OSM's automated Applicant/Violator System for each contract to be awarded.''

In one other respect, proposed NDCC 38–14.2–03(14) differs from the requirements of 30 CFR 874.16 and 875.20. In the proposed statute, North Dakota did not include counterpart provisions to the Federal requirements regarding presumption of abatement of notices of violation. 30 CFR 874.16 and 875.20, through their referencing of 30 CFR 773.15(b)(1), set forth the circumstances under which the regulatory authority may presume that a notice of violation is being abated. If these circumstances exist, the regulatory authority would not withhold the awarding of the contract until the violation was actually abated. The language proposed at NDCC 38–14.2–03(14) does not make it inconsistent with 30 CFR 874.16 and 875.20, but it does make it more stringent than these Federal regulations.

In response to OSM's December 7, 1995, issue letter (administrative record No. ND–X–04) concerning these identified deficiencies, North Dakota proposed additional explanatory information for NDCC 38–14.2–03(14) in the form of a policy document dated April 30, 1996, that provides guidelines to govern the selection of successful bidders for AMLR contracts. Specifically, the North Dakota PSC proposed to add a policy statement that requires a background search of successful bidders for AMLR contracts, provides the criteria to be used in determining the eligibility of the successful bidder under 30 CFR 773.15(b)(1) at the time of contract award, limits the award of the AMLR contract to a successful bidder who meets the criteria used to determine eligibility, and provides that the eligibility determination will be made through OSM's Applicant/Violator System for each AMLR contract to be awarded. This policy document requires that the successful bidder for an AML contract meet all the requirements of the Federal regulations at 30 CFR 874.16 and 875.20. In addition, the policy document provides that in the event that circumstances exist whereby the regulatory authority presumes that a notice of violation is being abated, the regulatory authority will not withhold award of the contract until the violation is actually abated. This is consistent with the presumption of abatement provisions of the Federal regulations.

Therefore, based upon the April 30, 1996, policy document submitted by North Dakota, which requires that the successful bidder for AML contracts must meet the eligibility criteria as provided by the Federal regulations at 30 CFR 874.16 and 875.20, the Director finds that NDCC 38–14.2–03(14), when used in conjunction with this policy document, is in compliance with 30 CFR 874.16 and 875.20. The Director approves the addition of the statute and supporting policy document to the North Dakota plan.

3. North Dakota PSC Procurement Procedures and Contract Procedures

North Dakota proposed revisions to various parts of the North Dakota PSC Procurement Procedures, including (1) section II, definitions and miscellaneous policy provisions, at subsection E, contract execution; subsection H, contractor selection; subsection I, final report; subsection K, preference; and subsection M, procurement officer; (2) section III, Public Service Commission and public contractor code of conduct,

at subsection B, gifts; and (3) section IV, procurement procedural requirements, at subsection B, procurement procedure; subsection C, method of procurement; and subsection D, unsolicited proposal. North Dakota also proposed to add appendices to this document at: A, evaluation criteria for request for proposals/competitive negotiations; B, sample scoring system for competitive negotiation type contracts; C, procedures for competitive contract negotiations; D, procedures for sole source procurement; and E, checklist for work statement (specific provisions) contracts and requests for proposals.

In addition, North Dakota proposed revisions in various parts of the North Dakota PSC Contract Procedures, including (1) section II, checklist for negotiating contracts, and (2) section III, standard contract provisions, at subsection B, construction contracts. North Dakota also proposed to add appendices to this document at: A, sample close-out letter to contractor; B, sample contract transmittal letter; C, sample detailed budget sheet for cost reimbursable contracts; D, checklist for negotiating contracts; E, Public Service Commission contract numbering system; F, conflict of interest disclaimer; G, checklist for work statement (specific provisions) contracts and request for proposals; and H, certification of payment to employees, suppliers, and subcontractors.

The Federal regulations at 30 CFR 884.14(a)(3) require, for State reclamation plan approval, that the State must have the policies necessary to carry out the State's AML plan. 30 CFR 884.13(d)(3) requires that the State reclamation plan must contain a description of the purchasing and procurement systems used by the designated State agency and that such systems must meet the requirements of the Office of Management and Budget Circular A–102, Attachment O (commonly referred to as the ''Grants Common Rule''). This circular is implemented in accordance with the Federal regulations at 43 CFR Part 12. 43 CFR 12.76(a), which pertains to States, provides that a State will, when procuring property and services under a grant, follow the same policies and procedures it uses for procurements from its non-Federal funds and that the State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

The proposed revisions to the North Dakota procurement procedures and contract procedures are consistent with the Federal regulations at 30 CFR 884.13 (d)(3) and 43 CFR 12.76(a). Therefore, the Director finds that North Dakota's proposed revisions to the North Dakota PSC Procurement Procedures and Contract Procedures are in compliance with the requirements of the Federal regulations. The Director approves the proposed revisions.

4. North Dakota PSC Contract Policy 2–02–81(5) and Procurement Policy 2–01–81(5)

The North Dakota plan contains a document titled ''North Dakota Public Service Commission Contract and Procurement Policy,'' which consists of two instruments, both dated January 12, 1981: Procurement Policy 2–01–81(5), which was adopted on January 12, 1981, and revised on September 6, 1995; and Contract Policy 2–02–81(5), which was adopted on January 12, 1981, and revised on September 6, 1995. However, North Dakota neither showed nor described the changes it made to either existing policy.

The Federal regulation at 30 CFR 884.15(a) requires the Director to follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision of a State reclamation plan. 30 CFR 884.14(a)(3) requires that the State must have the policies necessary to carry out the State's AML plan. The contract and procurement policy included by North Dakota in this amendment is consistent with the requirement of the Federal regulations that the State reclamation plan include the policies necessary to carry out the plan. Therefore, the Director finds that the document titled ''North Dakota Public Service Commission Contract and Procurement Policy'' is in compliance with the Federal regulations at 30 CFR 884.14(a)(3). The Director approves this document.

5. Agency Organization

North Dakota submitted a revised organizational chart for the State's Public Service Commission. The chart indicates that 5.3 employees are devoted to Abandoned Mine Lands Division. OSM has confirmed that North Dakota intended to indicate that the staffing level is 5.8 employees. OSM has approved grants for a 5.8 employee staffing level.

The Federal regulation at 30 CFR 884.15(a) requires the Director to follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision of a State reclamation plan. 30 CFR 884.14(d) and (d)(1) require that the State reclamation plan must include a description of the administrative and management structure necessary to carry out the proposed plan, including the organization of the designated State agency authorized by the Governor of the State to administer this program and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity. Inherent within the ''administrative structure'' is the staffing level to carry out the plan.

The Director finds that 5.8 employees is an appropriate staffing level for carrying out the North Dakota plan and approves this level of staffing within the North Dakota PSC for administering the North Dakota plan.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota plan (administrative record Nos. ND–X–07 and ND–X–13).

U.S. Department of Agriculture Natural Resources Conservation Service (NRCS).—NRCS responded on April 30 and May 30, 1996, that it had no comments on the proposed program amendment (administrative record Nos. ND–X–08 and ND–X–16).

U.S. Department of Interior Fish and Wildlife Service (FWS).—FWS responded on May 3 and June 4, 1996, that it did not anticipate any significant impacts to fish and wildlife resources as a result of the proposed amendment and that it had no additional comments (administrative record Nos. ND–X–11 and ND–X–15).

U.S. Environmental Protection Agency (EPA).—EPA responded on May 6 and 31, 1996, that it had no comments on the amendment and that it concurred with the proposed revisions (administrative record Nos. ND–X–10 and ND–X–14).

U.S. Army Corps of Engineers.—The Army Corps of Engineers responded on May 9, 1996, that it found the changes proposed in the North Dakota plan to be satisfactory (administrative record No. ND–X–12). The Corps commented that it had noted a minor numbering error in

section IV of part I.C., North Dakota Public Service Commission Procurement Procedures, where a new paragraph (C.4.b.3) had been added and the subsequent paragraphs were not renumbered. OSM has passed the Army Corps of Engineer's comment on to the North Dakota Public Service Commission. It is left to the State to determine whether it will make this editorial change.

The Army Corps of Engineers also responded on June 7, 1996, that it found North Dakota's April 30, 1996, response to OSM's issue letter to be satisfactory (administrative record No. ND–X–17).

V. Director's Decision

Based on the above findings, the Director approves North Dakota's proposed plan amendment as submitted on September 20, 1995, and as supplemented with additional explanatory information on April 30, 1996.

The Director approves, as discussed in: finding No. 1 North Dakota Public Service Commission Procurement Procedures and Contract Procedures, concerning the title and table of contents; finding No. 2, NDCC 38–14.2–03(14), concerning bidder eligibility for abandoned mine land contracts; finding No. 3, North Dakota Public Service Commission Procurement Procedures and Contract Procedures, concerning the purchasing and procurement systems used by the North Dakota Public Service Commission in administering the State reclamation program; finding No. 4, North Dakota Public Service Commission Contract and Procurement Policy, concerning Contract Policy 2–02–81(5) and Procurement Policy 2–01–81(5), which are necessary to carry out the State reclamation plan; and finding No. 5, North Dakota Public Service Commission Organizational Chart dated September 1, 1995, which shows the number of employees needed to administer the State reclamation plan.

The Director approves the statute and plan provisions as proposed by North Dakota with the provision that they be fully promulgated in identical form to the statute and plan provisions submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards 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 Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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 Tribe or State submittal which is the subject of this rule is based upon 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 established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

6. Unfunded Mandates Reform Act

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

List of Subjects in 30 CFR Part 934

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 10, 1996.

Peter A. Rutledge,

Acting 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 934.25 is amended by adding paragraph (e) to read as follows:

§ 934.25 Approval of abandoned mine land reclamation plan amendments.

* * * * *

(e) The revisions to and the addition of the following statute and plan provisions, as submitted to OSM on September 20, 1995, and as supplemented with explanatory information on April 30, 1996, are approved effective October 8, 1996: North Dakota Century Code (NDCC) 39–14.2–03(14), bidder eligibility for abandoned mine land contracts; North Dakota Public Service Commission (PSC) Procurement Procedures and Contract Procedures, both revised August 1995; North Dakota PSC Contract Policy 2–02–81(5) and Procurement Policy 2–01–81(5), both revised on September 6, 1995; and North Dakota PSC organizational chart dated September 1, 1995.

[FR Doc. 96–25722 Filed 10–7–96; 8:45 am]

BILLING CODE 4310–05–M