(B) Substantial decisions do not include decisions exercisable by a grantor, unless the grantor is acting as a fiduciary under section 7701(a)(6) and § 301.7701–6(b). In addition, substantial decisions do not include decisions exercisable by a beneficiary, unless the beneficiary is acting as a fiduciary under section 7701(a)(6) and § 301.7701–6(b), that affect solely the portion of the trust in which the beneficiary has an interest. Decisions that are ministerial include decisions regarding details such as the bookkeeping, the collection of rents, and the execution of investment decisions made by the fiduciaries.

(iii) *Control.* Control means having the power, by vote or otherwise, to make all of the substantial decisions of the trust, with no other person having the power to veto the substantial decisions. However, the ability of a grantor (other than a grantor acting as a fiduciary under section 7701(a)(6) and § 301.7701–6(b)) to veto another person's substantial decision does not cause such person to fail to control that substantial decision. In addition, the ability of a beneficiary (other than a beneficiary acting as a fiduciary under section 7701(a)(6) and § 301.7701–6(b)) to veto another person's substantial decision that affects solely the portion of the trust in which the beneficiary has an interest does not cause such person to fail to control that substantial decision.

(2) *Replacement of a fiduciary.* In the event of an inadvertent change in the fiduciaries that would cause a change in the residency of a trust, the trust is allowed six months from the date of the change in the fiduciaries to adjust either the fiduciaries or the residence of the fiduciaries so as to avoid a change in the residence of the trust. Inadvertent changes in the fiduciaries include the death of a fiduciary or the abrupt resignation of a fiduciary. If the adjustment is made within six months, the trust is treated as retaining its pre-change residence during the six-month period. If the adjustment is not made within six months, the trust residence changes as of the date of the inadvertent change.

(3) *Automatic migration provisions.* Notwithstanding any other provision in this section, United States fiduciaries are not considered to control all substantial decisions of the trust if an attempt by any governmental agency or creditor to collect information from or assert a claim against the trust would cause one or more substantial decisions of the trust to no longer be controlled by United States fiduciaries.

(4) *Examples.* The following examples illustrate the rules of this paragraph (e):

Example 1. *A* is a nonresident alien individual. *A* is the grantor and beneficiary of an individual retirement account (IRA) and has the exclusive power to make decisions regarding withdrawals from the IRA and to direct its investments. *A* is not a fiduciary as defined in paragraph (e)(1)(i) of this section. The IRA has a single United States trustee and no foreign trustees. The United States trustee has the power to control all decisions of the trust other than withdrawal and investment decisions. In this case, decisions regarding withdrawals and the trust's investments are not substantial decisions because these decisions are solely exercisable by the grantor. Therefore, the control test is satisfied because the United States fiduciary controls all substantial decisions.

Example 2. *A* is a nonresident alien individual. *A* is the grantor of a trust and has the power to revoke the trust, in whole or in part and revest assets in *A*. *A* is the owner of the trust under section 676. *A* is not a fiduciary as defined in paragraph (e)(1)(i) of this section. The trust has two trustees, *B*, a United States person and *C*, a nonresident alien. *C*'s only power is the power to make distributions from the trust and *C* can exercise this power without authorization from *B*. In this case, decisions exercisable by *A* to have trust assets distributed to *A* are not substantial decisions because these decisions are exercisable by the grantor. However, distribution decisions exercisable by *C* are substantial decisions. Therefore, the trust is a foreign trust because *B* does not control all substantial decisions of the trust.

Example 3. Trust has three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens and *C* is a nonresident alien. The trust instrument directs that *C* is to make all of the trust's investment decisions, but that *A* and *B* may veto *C*'s investment decisions. *A* and *B* cannot act to make the investment decisions on their own. The control test is not satisfied because the United States fiduciaries, *A* and *B*, do not have the power to make all of the substantial decisions of the trust.

Example 4. Trust has two fiduciaries, *A* and *B*, both of whom are United States citizens. The trust instrument provides that *C*, a foreign corporation, will serve as an advisor and recommend investments to *A* and *B*. *A* and *B* may accept or reject *C*'s recommendations and can make investments that *C* has not recommended. *A* and *B* control all other decisions of the trust. *A* and *B* delegate to *C* the authority to execute the investment decisions approved by *A* and *B*. The control test is satisfied because the United States fiduciaries control all substantial decisions of the trust.

Example 5. Trust has three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens and *C* is a nonresident alien. The trust instrument provides that no substantial decisions of the trust can be made unless there is unanimity among the fiduciaries. The control test is not satisfied because the United States fiduciaries do not control all the substantial decisions of the trust. No substantial decisions can be made without *C*'s agreement.

Example 6. (i) A trust that satisfies the court test has three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens and *C* is a nonresident alien. Decisions are made by majority vote of the fiduciaries. The trust instrument provides that upon the death or resignation of any of the fiduciaries, *D*, a nonresident alien, is the successor fiduciary. *A* dies and *D* becomes a fiduciary of the trust. Two months after *A* dies, *E*, a United States person, replaces *D* as a fiduciary of the trust. During the period after *A*'s death and before *E* begins to serve, the trust satisfies the control test and remains a domestic trust.

(ii) Assume the same facts as in paragraph (i) of this *Example 6* except that at the end of the six-month period after *A*'s death, *D* has not been replaced and remains a fiduciary of the trust. The trust became a foreign trust on the date *A* died.

Example 7. Trust has three beneficiaries, *A*, *B* and *C*, all of whom are nonresident aliens. Each beneficiary has the right to receive all of the income from his or her share of the trust for life. Each beneficiary also has a limited power of appointment over his or her respective share of the trust. The trust has only one fiduciary, *D*, a United States citizen. The trust meets the control test because the United States fiduciary controls all substantial decisions of the trust notwithstanding the beneficiaries' powers of appointment over their respective interests.

(f) *Effective date.* This section is applicable to trusts for taxable years beginning after December 31, 1996, and to trusts whose trustee has elected to apply sections 7701(a)(30) and (31) to the trust for taxable years ending after August 20, 1996, under section 1907(a)(3)(B) of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755 (26 U.S.C. 7701 note).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–14736 Filed 6–4–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–036–FOR; State Program Amendment No. XVIV]

North Dakota Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the

''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of repealing statutes pertaining to the Reclamation Research Advisory Committee. The amendment is intended to revise the North Dakota program to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m. m.d.t. July 7, 1997. If requested, a public hearing on the proposed amendment will be held on June 30, 1997. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on June 20, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to the Field Office Director's name and address listed below. Mr. Guy Padgett, Director, Casper Field Office, U.S. Office of Surface Mining, 100 East ''B'' Street, Room 2128, Casper, Wyoming 82601–1918.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Mr. Guy Padgett, Director, Casper Field Office, U.S. Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Room 2128, Casper, Wyoming 82601–1918

Mr. James R. Deutsch, Director, Reclamation Division, Public Service Commission, State Capitol—600 E. Boulevard, Bismarck, North Dakota 58505–0480, Telephone: 701/328–2400.

FOR FURTHER INFORMATION CONTACT: Mr. Guy Padgett, Telephone: 307/261–6550.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15, 934.16, and 934.30.

II. Proposed Amendment

By letter dated May 2, 1997, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (Amendment number XXIV), administrative record No. ND–Y–01, 30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment on its own initiative. The provisions of the North Dakota Century Code that North Dakota proposed to delete were: NDCC 38–14.1–04.1, Reclamation research advisory committee; NDCC 38–14.1–04.2, Advisory Committee responsibilities; NDCC 38–14.1–04.3, Reclamation research objective.

Specifically, North Dakota proposed to repeal the provisions in its law that set up its Reclamation Research Advisory Committee since this committee is no longer necessary.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on June 20, 1997. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meeting will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program

provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates

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

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 29, 1997.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 97–14728 Filed 6–4–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 3

[Docket No. 970428100–7100–01]

RIN 0651–AA87

Miscellaneous Changes to Trademark Trial and Appeal Board Rules

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend its rules governing practice before the Trademark Trial and Appeal Board (Board) to expedite inter partes proceedings. These proposed changes enlarge the time periods for discovery, testimony, and response to motions, and concomitantly limit the circumstances in which extensions may be obtained. In addition, they impose strict limitations on the number of written discovery requests which one party may serve upon another party in a proceeding. Other proposed inter partes rule amendments clarify the rules, conform the rules to current practice, simplify practice, and correct cross-references. Finally the PTO proposes to amend 37 CFR 2.76(a), 2.76(g), and 2.76(h), which affect practice in ex parte appeals to the Board, to conform these rules to current practice.

DATES: Written comments must be received on or before August 4, 1997 to ensure consideration. An oral hearing will not be conducted.

ADDRESSES: Written comments may be sent by mail addressed to Assistant Commissioner for Trademarks, Box TTAB—No Fee, 2900 Crystal Drive, Arlington, Virginia 22202–3513, marked to the attention of Ellen J. Seeherman. Written comments may also be sent by facsimile transmission to (703) 308–9333, marked to the attention of Ellen J. Seeherman. Written comments will be available for public inspection in Suite 900, on the 9th Floor of the South Tower Building, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

FOR FURTHER INFORMATION CONTACT: Ellen J. Seeherman, Administrative Trademark Judge, Trademark Trial and Appeal Board, by telephone at (703) 308–9300, extension 206, or by mail marked to her attention and addressed to Assistant Commissioner for Trademarks, Box TTAB—No Fee, 2900 Crystal Drive, Arlington, Virginia 22202–3513 or by facsimile transmission marked to her attention and sent to (703) 308–9333.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking is designed to improve practice and expedite proceedings in inter partes cases before the Trademark Trial and Appeal Board (Board). In addition, the proposed amendments codify and clarify certain practices of the Board and correct certain references to citations of the Trademark Act and the Code of Federal Regulations.

The proposed amendments, and the reasons for the amendments, are discussed below.

The Board's workload has increased dramatically in the last several years because of a rapid growth in the number of inter partes and ex parte proceedings filed with the Board. Along with this increase in the number of proceedings, there has been a marked increase in the number of motions and other papers filed in each inter partes case. It appears to the Board that this proliferation of papers has been due, in large part, to the fact that in recent years, many attorneys practicing before the Board in inter partes cases have taken an increasingly aggressive approach by filing every possible motion that may be filed and by responding to every paper filed to the point of sur-reply and sur-sur-reply briefs. It also appears that some of the papers filed are part of a strategy to bury the adverse party with paper, so that it becomes too expensive for that party to proceed with the case, and the party is forced to settle or capitulate. Whatever the reason, in many cases the number of papers filed goes far beyond what is reasonably needed for a Board proceeding. The filing of these papers causes needless work and expense for the parties and the Board. Moreover, the rapid growth in the number of papers filed has caused substantial delays in all phases of the Board's work, including the resolution of motions and the final determination of proceedings.

A number of the rule amendments proposed in this notice, namely, the proposed amendments to §§ 2.120(a), 2.120(d)(1), 2.120(d)(2), 2.120(e), 2.120(h), 2.121(a)(1), 2.121(c), 2.127(a), 2.127(b), 2.127(d), and 2.127(e)(1), are designed to address these problems by changing certain Board practices relating to discovery, testimony periods, and motions. In addition, § 2.120(a) is proposed to be amended to clarify Board discovery practice in the wake of the December 1, 1993 amendments to the Federal Rules of Civil Procedure.

Other amendments proposed in this notice serve to clarify the rules, conform the rules to current Board practice, simplify practice, and correct certain cross-references in the rules. The rules affected by these proposed amendments are §§ 2.76(a), 2.76(g), 2.76(h), 2.85(e), 2.87(c), 2.101(d)(1), 2.102(d), 2.111(b), 2.111(c)(1), 2.117(a), 2.117(b), 2.119(d), 2.120(g)(1), 2.121(d), 2.122(b)(1), 2.122(d)(1), 2.123(b), 2.123(f), 2.125(c), 2.127(f), 2.134(a), and 2.146(e)(1).

Proposed Amendments Relating to Discovery

It is the experience of the Board that a large number of motions and requests are filed in connection with discovery. Many of these filings relate to repeated requests for extensions of time,