1, 1995) for an explanation of how amounts are taken into account under the cut-off method (except that, for purposes of this paragraph (d)(2), the change applies to all amounts otherwise incurred on or after the first day of the first taxable year beginning after December 31, 1991). For taxable years ending before April 7, 1995, see Q&A–6 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995) for an explanation of how amounts are taken into account under the full-year change method (except that the change in method occurs on the first day of the first taxable year beginning after December 31, 1991). For taxable years ending before April 7, 1995, the full-year change in method may result in a section 481(a) adjustment that must be taken into account in the manner described in Q&A–8 and Q&A–9 of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995) (except that the taxable year of change is the first taxable year beginning after December 31, 1991).

(ii) *Manner of changing to the recurring item exception method.* For the first taxable year beginning after December 31, 1991, a taxpayer may change to the recurring item exception method by accounting for the item on its timely filed original return for such taxable year (including extensions). For taxable years ending before April 7, 1995, the automatic consent of the Commissioner is limited to those items accounted for under the recurring item exception method on the timely filed return, unless the taxpayer indicates a wider scope of change by filing the statement provided in Q&A–7(b)(2) of § 1.461–7T (as it appears in 26 CFR part 1 revised April 1, 1995).

* * * * *

§ 1.461–7T [Removed]

Par. 5. Section 1.461–7T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by removing the entry for 1.461–3T from the table and adding the following entries in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.461–4	1545–0917
1.461–5	1545–0917
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: April 5, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–9034 Filed 4–7–95; 4:56 pm]

BILLING CODE 4830–01–U

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, a proposed amendment to the North Dakota regulatory program (hereinafter referred to as the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions to and additions of rules pertaining to: areas unsuitable for mining; permit applications (environmental monitoring plans); permit application approval procedures; permit revisions, renewals, and transfer or sale; performance bond; resoiling performance standards; sediment pond performance standards; contemporaneous reclamation performance standards; and enforcement actions. The amendment is intended to revise the North Dakota program to be consistent with the corresponding Federal regulations, address required program amendments, clarify ambiguities, correct cross-references, and improve program efficiency.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, 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 November 10, 1994, North Dakota submitted a proposed amendment to its program pursuant to SMCRA (Amendment number XXI, Administrative Record No. ND–V–01, State Program Amendment Tracking System No. ND–031–FOR). North Dakota submitted the proposed amendment in response to the required program amendments at 30 CFR 934.16(u) and at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposes to revise or add are: NDAC 69–05.2–04–07(3)(a), lands unsuitable for mining; NDAC 69–05.2–05–09, permit applications (environmental monitoring plans); NDAC 69–05.2–06–01(2), permit applications (identification of interests); NDAC 69–05.2–06–02(6), permit applications (compliance information); NDAC 69–05.2–10–03(5), criteria for permit approval; NDAC 69–05.2–11–02(1)(d), permit revisions; NDAC 69–05.2–11–03(5)(c), permit renewals; NDAC 69–05.2–11–06(1)(c), transfer, sale, or assignment of permit rights; NDAC 69–05.2–12–09(2), performance bond (period of liability); NDAC 69–05.2–15–02(2)(a), performance standards (suitable plant growth materials); NDAC 69–05.2–16–09 (7) and (20), performance standards (sediment ponds); NDAC 69–05.2–21–01(2), performance standards (backfilling and grading, timing requirements); and NDAC 69–05.2–28–03(b), inspection and enforcement (cessation orders).

OSM announced receipt of the proposed amendment in the December 9, 1994, Federal Register (59 FR 63738), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. ND–V–06). Because no one

requested a public hearing or meeting, none was held. The public comment period ended on January 9, 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, that the proposed program amendment submitted by North Dakota on November 10, 1994, is no less effective than the corresponding Federal regulations in meeting SMCRA's requirements. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to North Dakota's Rules

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

NDAC 69–05.2–11–02(1)(d) (30 CFR 774.13(d)), when permit revisions are required;

NDAC 69–05.2–11–03(5)(c) (30 CFR 774.15(b)(2)(iv)), requirements for applications to renew permits;

NDAC 69–05.2–11–06(1)(c) (30 CFR 774.17(a), (d)), requirements for transfer, sale, or assignment of permit rights; and

NDAC 69–05.2–12–09(2) (30 CFR 800.13), period of performance bond liability.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed revisions do not substantively change the North Dakota program as already approved. The Director approves these proposed revisions.

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

North Dakota proposed revisions to the following previously-approved rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses):

NDAC 69–05.2–04–07(3)(a) (30 CFR 764.21(c)(1)), database and inventory system for use in designating lands unsuitable for mining; and

NDAC 69–05.2–28–03(6) (30 CFR 843.11(a)(2)) (introductory text), significant imminent environmental harm.

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

3. NDAC 69–05.2–05–09, Consolidated Monitoring Plans

North Dakota proposes to add a new rule to allow a permittee to develop one consolidated monitoring plan (hereinafter, ''CMP'') for certain required monitoring plans that would cover multiple permits for a particular surface coal mining and reclamation operation. Specifically, North Dakota proposes NDAC 69–05.2–05–09 as follows:

> The Commission will allow monitoring plans required by [NDAC] article 69.05 and North Dakota Century Code chapter 38–14.1 to be consolidated by the permittee into one single monitoring plan for each surface coal mining and reclamation operation subject to the following requirements:
>
> 1. Each [CMP] will be subject to the approval procedures established for permit revisions.
> 2. Each mining permit must be revised describing the specific monitoring plan or plans to be consolidated into a single monitoring plan covering the entire surface coal mining and reclamation operation under permit.
> 3. Each [CMP] will be subject to review by the commission at the time of the midterm review or renewal for each permit covered by the [CMP] in accordance with the requirements of section 69–05.2–11–01.
> 4. A permittee may propose modifications to a [CMP] by filing a permit revision application to the most recently issued permit covered by the [CMP].

North Dakota also appends to the submittal a written rationale for its proposal at NDAC 69–05.2–05–09 (Amendment XXI, Administrative Record No. ND–V–1, ''IV. Appendix''). In that written rationale, North Dakota clarifies that the proposal is directed toward instances where one mine (i.e., one surface coal mining and reclamation operation) is authorized by multiple permits. The proposal would allow, as one example, the ground water monitoring plans for each of the individual permits to be combined into one consolidated ground water monitoring plan. The same allowance would apply for surface water monitoring, alluvial valley floor monitoring, and fish and wildlife monitoring.

A separate CMP would have to be developed for each category of monitoring. North Dakota indicates that this procedure would allow easier review of monitoring plans by both the regulatory authority and the public where one mine is covered by multiple permits.

North Dakota also indicated that individual permits would have to contain appropriate references to the various CMP's and that the CMP's would be a part of each permit. ''Since the [CMP] will be considered part of each mining permit it covers, failure to comply with the [CMP] will subject the permittee to the same enforcement action as would the failure to comply with any other part of a mining permit.'' In this case a single violation would be issued that lists all permits covered by the CMP. North Dakota states that it uses this same practice for violations of performance standards or requirements that are the same in more than one permit.

North Dakota's written rationale further notes that since CMP's may be revised, the reference in each permit will have to be the most recent (i.e., current) CMP. North Dakota proposes to review each CMP as part of the midterm review and renewal review of each included permit, and will require at those times any necessary revisions. North Dakota adds that, as it interprets its rule at NDAC 69–05.2–11–01(2), the commission is not precluded from reviewing permits and requiring permit revisions more frequently than at midterm or every five years (OSM notes that this interpretation would apply to requiring more frequent revisions to CMP's if necessary). The permittee may request revision of a CMP by applying for a permit revision to the most recently issued permit covered by the CMP. When new areas are added to a mining operation by application for new permits, the CMP's for the operation will have to be updated, and the updated CMP will be subject to the approval procedures for permit applications. If a CMP indicates any adverse environmental impacts, the portion of the whole operation affected would be subject to preventative or remedial measures as required by NDAC 69–05.2–09–12(2). Depending on the impacts, that area affected could involve parts of or all of one, several, or all of the permits covering the operation. Following final bond release of any portion of the area covered by a CMP, the permittee would have to continue monitoring that area until the CMP is revised to delete that area from the CMP.

North Dakota also specifically listed the monitoring requirements that could be consolidated, as follows: (1) Ground water monitoring—the requirements of NDAC 69–05.2–09–12(1)(e) and 69–05.2–16–14; (2) surface water

monitoring—the requirements of NDAC 69–05.2–09–12(1)(e) and 69–05.2–16–05; (3) alluvial valley floor monitoring—the requirements of NDAC 69–05.2–08–14(1)(e), 69–05.2–09–16, and 69–05.2–25–03; and (4) fish and wildlife monitoring—the requirements of NDAC 69–05.2–09–17(1)(e) and 69–05.2–13–08(1).

OSM acknowledges that on surface coal mining and reclamation operation may be authorized by a succession of permits for individual areas. Both the State statute at North Dakota Century Code (NDCC) at 39–14.1–15(1) and SMCRA Section 508(a)(1) provide that all permit applications include the identification of ''land subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits will be sought.'' And, OSM agrees with North Dakota that it would be easier for the public, the permittee, and the regulatory authority to review and revise the monitoring plans for the operation, and evaluate the monitoring data submitted, if those materials were in one place rather than spread out through several permit files.

OSM also notes that North Dakota does not propose to eliminate or reduce any monitoring required under the individual permits. For example, in order to be approved, a consolidated ground water monitoring plan would have to contain sufficient monitoring sites, monitoring methodologies, monitoring parameters, monitoring frequency, etc., to meet the requirements of NDAC 69–05.2–09–12(1)(e) and 69–05.2–16–14 for each of the included permit areas. Similarly, all of North Dakota's rule requirements would remain in effect regarding required preventative or remedial changes to surface coal mining and reclamation operations if monitoring data indicates the operation is having unanticipated adverse environmental impacts. North Dakota's written rationale for the provision specifically addresses this requirement at NDAC 69–05.2–09–12(2) (protection of the hydrologic balance), but any other such regulatory requirement (for preventative or remedial changes to the operation) would also be unaffected by this proposal for CMP's. Finally, North Dakota's proposal would not eliminate or reduce any required enforcement actions, since CMP's would be made part of each included permit, meaning that failure to comply with the CMP would mean noncompliance with each of the permits. Since each included permit would be listed in any such enforcement action, the single enforcement action would be considered for potential patterns of violation for each of the included permits.

OSM closely considered two aspects of North Dakota's proposal. First, the proposal would allow a CMP to be revised by submitting a revision application for only one of the permits included in the CMP; since the revised CMP would be incorporated into the other permits by reference, this would in effect revise all of the permits in the particular surface mining operation. But as noted above, the proposal does not eliminate or reduce the regulatory monitoring requirements of the individual permits. Thus in order to be approved, the revision application would in essence have to be revised as a revision to each permit. Further, OSM notes that if a revision to a CMP were considered a significant alteration subject to public notice under NDAC 69–05.2–11–02(5)(a), the public notice required by NDCC 38–14.1–18(1) would have to list all of the permit areas as lying within the ''boundaries of the land proposed to be affected by the * * * permit revision.'' Hence, the public would have adequate notice that all included permits are being revised.

The second aspect that OSM considered is the adoption of revised CMP as part of a permit application to add new permit area to a life-of-mine operation. North Dakota's written rationale, as noted above, addressed this by noting that the proposed revised CMP would in that instance be subject to the approval procedures for permit applications. On its fact, this statement appears to contradict proposed NDAC 69–05.2–05–09(1) (which proposes that CMP's will be subject to the approval procedures established for permit revisions) and proposed NDAC 69–05.2–05–09(4) (which proposes that modifications to a CMP may be proposed by an operator by filing a permit revision application).

OSM does not consider this apparent contradiction to be a deficiency. OSM notes that for any proposal to revise a CMP that would be included in a permit application to be approved, the regulatory authority would have to find (under NDCC 38–14.1–21(3)(a) [written findings for permit approval]) that the proposed CMP complied with NDAC 69–05.2–05–09. Strictly interpreted, that would require that the applicant simultaneously file a permit revision application to the most recent existing permit, and that that revision application be reviewed simultaneously with the application for the new permit. However, OSM observes that nothing would be gained from such a simultaneous dual application and dual review. As noted earlier, a proposed CMP does not eliminate or reduce the regulatory monitoring requirements of the individual permits. Thus, a proposed modified CMP contained in an application for a new permit would, in the review of the new application, be reviewed to ensure that it would fulfill all the regulatory monitoring requirements of all of the included permits. That is precisely the same level of review and approval that would be accomplished under the dual application and review under the strict interpretation. Therefore OSM does not find any deficiency in North Dakota's written intention to have the permit application approval procedures supersede the permit revision procedures under these circumstances. OSM notes that this aspect of the proposal would be clearer if this supersession were incorporated in the North Dakota program at NDAC 69–05.2–05–09, and OSM encourages North Dakota to consider this in the future.

Based upon the above discussion, the Director finds that North Dakota's proposal at NDAC 69–05.2–05–09 is consistent with the Federal regulations, and will assist North Dakota in the efficient administration of its program. Therefore the Director is approving the proposal.

4. NDAC 69–05.2–06–01(2), 69–05.2–06–02(6), and 69–05.2–10–03(5), Permit Application Review and Criteria for Approval, Final Compliance Review

NDAC 69–05.2–06–01(2) currently requires that after a permit application has been approved but before the permit is issued, the applicant shall update or correct the ownership and control (identification of interests) information in the application, or indicate that no change has occurred. North Dakota proposes to revise this provision to require that the update, correction, or indication be made when the application is ''deemed ready for approval'' but before the permit is issued. Similarly, NDAC 69–05.2–06–02(6) currently requires that after a permit application is approved (but before the permit is issued), the applicant shall update or correct the compliance information (violations list) in the application, or indicate that no change has occurred. North Dakota proposes to revise this provision to require that the update, correction, or indication be made when the permit application is ''deemed ready for approval'' but before the permit is issued. Finally, NDAC 69–05.2.–10–03(5) currently requires North Dakota,

after a permit application is approved (but before the permit is issued) to reconsider its approval decision based on the updates or corrections resulting from the provisions mentioned above. North Dakota proposes to revise this provision to require that after an application is ''deemed ready for approval'' (but before the permit is issued), the regulatory authority make its decision to approve or disapprove the application, based on the updated or corrected information.

The Federal regulations at 30 CFR 778.13(i) require that after a permit application is approved (but before the permit is issued), the applicant shall update or correct the ownership and control (identification of interests) information in the permit, or indicate that no change has occurred. Similarly, 30 CFR 778.14(d) requires that after an application has been approved (but before the permit is issued), the applicant shall update or correct the violation information in the application, or indicate that no change has occurred. Finally, 30 CFR 773.15(e) requires the regulatory authority, after an application is approved (but before the permit is issued) to reconsider its approval decision, based on the corrected or updated application information submitted under the provisions mentioned above.

In all three cases, North Dakota's proposal would require the submission or review of the updated or corrected information when the application is ''deemed ready for approval,'' while the Federal regulations require that the corrected or updated information be submitted or reviewed after the application is approved but before the permit is issued. OSM interprets the proposed language ''deemed ready for approval'' to mean that all technical and legal review of the permit application has been completed, all written findings have been completed, and the regulatory authority has determined that all criteria for the approval of the application have been met.

The intent of the Federal regulations cited above was expressed in the preamble to those rules (54 FR 8962; March 2, 1989):

> Experience has shown that the time that elapses between the submission of an application and the issuance of the permit typically is several months at a minimum. Information submitted with the application may become dated by the time of permit issuance, thus making it impossible for the regulatory authority to make an accurate compliance review under [30 CFR] 773.15(b)(1).
>
> This rule adds * * * [a requirement] that before a permit is issued the regulatory authority reconsider its initial § 773.15(b)(1) compliance review in light of any new information submitted pursuant to §§ 778.13(i) and 778.14(d) * * * The final compliance review based on this updated information will [e]nsure that the regulatory authority makes an accurate permitting decision under § 773.15(b)(1).

OSM notes that under North Dakota's proposals, the corrected or updated information would also be required at the very end of the application review period, and would be reviewed by the regulatory authority at that time. The regulatory authority's decision on permit issuance would be based on the updated or corrected information. Thus the Director finds that North Dakota's proposals at NDAC 69–05.2–06–01(2), 69–05.2–06–02(6), and 69–05.2–10–03(5) are no less effective in meeting SMCRA's requirements than the Federal regulations at 30 CFR 773.15(e), 778.13(i), and 778.14(d), and is approving those proposals.

5. NDAC 69–05.2–15–02(2)(a), Performance Standards (Suitable Plant Growth Material)

North Dakota proposes to delete the existing requirement that the regulatory authority must approve the topsoil removal for an area before subsoil removal begins or before any other disturbances occur in that area.

The Federal regulations at 30 CFR 816.22 do not require that the regulatory authority approve the removal of topsoil prior to further operations. Because the Federal regulations do not require regulatory authority approval of topsoil removal prior to further disturbance, the Director finds that North Dakota's proposed deletion of this requirement is not inconsistent with the Federal regulations, and is approving the proposal.

6. NDAC 69–05.2–16–09(7), Performance Standards for Sedimentation Ponds

North Dakota proposes to delete the existing requirement, applicable to all sediment ponds, that there must be no outflow through the emergency spillway from the ten-year, twenty-four-hour precipitation event or lesser events. In its place, North Dakota proposes a new provision that would require (for sedimentation ponds designed to contain the runoff from a ten-year, twenty-four-hour design event) that there must be no spillway outflow as a result of runoff from the design event or lesser runoff events, unless multiple runoff events occur before the pond can be dewatered in accordance with approved plans in the permit. North Dakota adds in a note to the submittal (see Administrative Record No. ND–V–01, side-by-side) that the North Dakota Department of Health requires operators to dewater sedimentation ponds within 10 days after a precipitation event. OSM notes that an existing provision of the North Dakota program, NDAC 69–05.2–16–09(6), states that the design, construction, and maintenance of a sediment pond or other sediment control measures does not relieve the operator from compliance with applicable effluent limitations.

The Federal regulations governing sediment ponds at 30 CFR 816.46 do not prohibit outflow from the emergency spillway in connection with any specified design event. Therefore, North Dakota's proposed deletion of its existing requirement is not inconsistent with those Federal regulations.

Regarding North Dakota's proposed new provision, the Federal regulations at 30 CFR 816.46(c)(iii)(C) require that sediment ponds be designed, constructed, and maintained to, among other things, contain or treat the 10-year, 24-hour precipitation event (lesser events can be approved by the regulatory authority in some specified circumstances). However, there is an implicit exception to the ''containment'' requirement, for those ponds designed to contain rather than treat the design event, at § 816.46(c)(1)(iii)(D). This regulation requires the provision of a nonclogging dewatering device to maintain the required detention time. In the preamble to this requirement (48 FR 44032, 44044; September 26, 1983), OSM noted that:

> If water accumulates in the pond and is not allowed to exit, the water level will rise and may not recede sufficiently to assure adequate detention time in the event of increased inflow to the pond.

Hence, the Federal rules anticipate that while a pond may be designed to ''contain'' the design event, the pond may not be able to contain runoff from a subsequent design event that occurs soon after an initial design event, unless some of the stored water is removed. But under § 816.46(c)(1)(iii)(C), that runoff must still be treated.

North Dakota's proposal in essence defines the performance standard of ''containment'': if a sediment pond is designed to ''contain,'' then there must be no spillway discharge from that design event. But it also explicitly recognizes what the Federal regulations only implicitly recognize: the sedimentation pond may not be able to contain subsequent design event that occurs before sufficient time elapses for dewatering the sedimentation pond. However, by requiring that effluent

standards must be met regardless of pond design or maintenance (subsection (6)), North Dakota requires that any resulting discharges be treated.

Based on the above discussion, the Director finds North Dakota's proposed replacement of the existing provision with the new provisions to be no less effective than the Federal regulations at 30 CRR 816.46(c)(1)iii)(C) in meeting SMCRA's requirements, and is approving the proposal.

7. NDAC 69–05.2–16–09(20), Inspection Frequency for Sedimention ponds.

North Dakota proposes to revise this provision to require that impoundments not meeting the criteria of 30 CFR Part 77.216 be inspected quarterly. The provision, as revised, would be substantively the same as the Federal regulation requirement at 30 CFR 816.49(a)(11) as it existed prior to November 21, 1994.

Effective November 21, 1994, OSM's requirement was redesignated as 30 CFR 816.49(a)(12). It was also revised to require that impoundments that meet the Soil Conservation Service (SCS) Class B or C criteria for dams in TR–60 (hereinafter, ''SCS criteria''), as well as impoundments that meet the criteria of 30 CFR Part 77.216 (hereinafter, ''MSHA criteria''), must be examined in accordance with § 77.216–3 (see 59 FR 53022; October 20, 1994). Under the revised Federal regulation, only impoundments that meet neither the MSHA criteria nor the SCS criteria may be inspected quarterly.

North Dakota's proposed rule would allow sedimentation ponds that do not meet the MSHA criteria, but do meet the SCS criteria, to be inspected quarterly. This would be less effective in meeting SMCRA's requirements than the new Federal regulation at 30 CFR 816.49(a)(12), under which those same sedimentation ponds would have to be examined in accordance with 30 CFR 77.216–3 (in most cases, weekly). However, OSM's rulemaking noted, under the section entitled ''Effect on State Programs,'' that State programs will not be required to meet the requirements of the new regulations until the Director reviews the State programs and informs the States of any deficiencies in accordance with 30 CFR 732.17 (see 59 FR 53022, 53026). North Dakota has to yet been informed by the Director that it must revise its program to conform with the new Federal regulation at 30 CFR 816.49(a)(12); hence, OSM is not at this time requiring North Dakota to revise its proposed rule to require that the new category of impoundments (those that meet the SCS criteria) be inspected in accordance with § 77.216–3.

North Dakota's proposal would require sedimentation ponds that meet neither the MSHA criteria nor the SCS criteria to be inspected quarterly. The Federal regulation at 30 CFR 816.49(a)(12) also requires those same impoundments to be inspected quarterly. Therefore the Director finds that North Dakota's proposal, insofar as it addresses that category of sedimentation ponds, is no less effective than the Federal regulation, and is approving the proposal insofar as it addresses that category (sedimentation ponds that meet neither the MSHA criteria nor the SCS criteria). The Director is not approving the proposal insofar as it allows sedimentation ponds that meet the SCS criteria, to be inspected quarterly.

The Director notes that this partial approval satisfies a required program amendment codified at 30 CFR 934.16(u) that was imposed on the North Dakota program in a rulemaking action on January 9, 1992 (57 FR 807, 827). That action required North Dakota to amend its program to require quarterly inspections of certain impoundments, to be no less effective than then-existing 30 CFR 816.49(a)(11). As noted above, North Dakota's proposal, insofar as approved, fulfills that requirement, and the Director is herewith removing it. OSM notes that the forthcoming notification from the Director in accordance with 30 CFR 732.17 will require North Dakota to amend its program to address those sedimentation ponds that meet the SCS criteria.

8. NDAC 69–05.2–21–01(2), Performance Standards for Contemporaneous Reclamation, Time and Distance Requirements

North Dakota proposes to revise this provision to allow the regulatory authority to grant additional distance (in addition to four spoil ridges behind the pit being worked) for completion of rough backfilling and grading if the permittee can demonstrate that such additional distance is necessary. The existing provision only allows the regulatory authority, in the same circumstances, to grant additional time (in addition to 180 days following coal removal) for completion of rough backfilling and grading.

OSM notes that a statutory requirement of the North Dakota program, at NDCC 38–14.1–24(14), requires, among other things, that permittees ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations.

OSM's time and distance requirements at 30 CFR 816.101 were suspended on July 31, 1992 (57 FR 33874). Therefore OSM must evaluate State time and distance requirements against the general contemporaneous reclamation requirements of 30 CFR 816.100. This regulation requires that all reclamation efforts (including backfilling, grading, topsoil replacement, and revegetation) on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations (except when variances are granted for concurrent surface and underground mining activities).

As noted above, the North Dakota program contains a statutory general contemporaneous reclamation requirement substantively equivalent to 30 CFR 816.100. North Dakota's proposed additional distance allowance at NDAC 69–05.2–21–01(2) provides additional specificity to one aspect of the general statutory requirement at NDCC 38–14.1–24(14) and is not inconsistent with that statutory requirement.

Based on the above discussion, the Director finds North Dakota's proposal at NDAC 69–05.2–21–01(2) to be consistent with the Federal regulations at 30 CFR 816.100, and is approving the proposal.

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 (Administrative Record No. ND–V–06), 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.

The U.S. Bureau of Mines responded on November 30, 1994, that it had no comment (Administrative Record No. ND–V–04). The State Director of the U.S. Department of Agriculture (USDA) Rural Economic and Community Development (formerly the Farmers Home Administration) responded on December 2, 1994, that it had no comment and felt the proposed

amendment would not affect its programs (Administrative Record No. ND–V–05). The U.S. Army Corps of Engineers responded on December 8, 1994, that the proposed changes were satisfactory to it (Administrative Record No. ND–V–07). The Agricultural Research Service, USDA, responded on December 13, 1994, that it had no comments or additions to the amendment (Administrative Record No. ND–V–08). The Fish and Wildlife Service responded on December 16, 1994, that it found the proposed changes to be logical and reasonable, and that the proposed rules were not anticipated to have any significant impacts on fish and wildlife resources (Administrative Record No. ND–V–09).

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–V–03). EPA's Region VIII office responded on December 21, 1994, that it had no comments and that it did not believe there would be any impacts to water quality standards promulgated under the Clean Water Act (Administrative Record No. ND–V–10).

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

V. Director's Decision

Based on the above findings, the Director approves, with one exception, North Dakota's proposed amendment as submitted on November 10, 1994. The Director does not approve, as discussed in Finding No. 7, NDAC 69–05.2–16–09(20) (insofar as it would allow sedimentation ponds not meeting the MSHA criteria but meeting that SCS criteria to be inspected quarterly).

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

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.

Effect of Director's Decision

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 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.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 7, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support 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 revising the heading and by adding paragraph (t) to read as follows:

§ 934.15 Approval of amendments to the North Dakota regulatory program.

* * * * *

(t) With the exception of NDAC 69–05.2–16–09(20) (to the extent that it addresses sedimentation ponds that do not meet the criteria of 30 CFR 77.216 but do meet SCS Class B or C criteria), revisions to the following rules, as submitted to OSM on November 10, 1994, are approved effective April 13, 1995.

North Dakota Administrative Code (NDAC) 69–05.2–04–07(3)(a), lands unsuitable for mining; NDAC 69–05.2–05–09, permit applications (permit monitoring plans); NDAC 69–05.2–06–01(2), permit applications (identification of interests); NDAC 69–05.2–06–02(6), permit applications (compliance information); NDAC 69–05.1–10–03(5), criteria for permit approval; NDAC 69–05.2–11–01(1)(d), permit revisions; NDAC 69–05.2–11–03(5)(c), permit renewals; NDAC 69–05.2–11–06(1)(c), transfer, sale, or assignment of permit rights; NDAC 69–05.2–12–09(2), performance bond (period of liability); NDAC 69–05.2–15–02(2a), performance standards (suitable plant growth material); NDAC 69–05.2–16–09(7) and (20), performance standards (sediment ponds); NDAC 69–05.2–21–01(2) performance standards (backfilling and grading, timing requirements); and NDAC 69–05.2–28–03(6), inspection and enforcement (cessation orders).

§ 934.16 [Amended]

3. Section 934.16 is amended by removing and reserving paragraph (u).

[FR Doc. 95–9176 Filed 4–12–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA37–1–6370a; FRL–5188–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Final Rule Pertaining to the Promulgation of SO_2: Conewango Township, Warren County Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On February 15, 1995, EPA published a final rule approving a revision to the State implementation plan for the Commonwealth of Pennsylvania. The revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides in the Conewango Township, Warren County nonattainment area. This action was published without prior proposal because EPA anticipated no adverse comment. Because EPA received adverse comments on this action, EPA is withdrawing the February 15, 1995 final rulemaking action pertaining to the State implementation plan for Pennsylvania.

EFFECTIVE DATE: April 13, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Air Programs (3AT22), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: 215 597–9781.

SUPPLEMENTARY INFORMATION: On February 15, 1995, EPA published a final rule to approve a revision to the Commonwealth of Pennsylvania State implementation plan (SIP) (60 FR 8566). The revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides in the Conewango Township, Warren County nonattainment area. The implementation plan was submitted by Pennsylvania to satisfy the requirements of the Clean Air Act (CAA) pertaining to nonattainment areas. EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as noncontroversial and anticipated no adverse comments. The final rule was published in the Federal Register with a provision for a 30-day comment period. At the same time, EPA published a proposed rule which announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the Federal Register (60 FR 8612). By publishing a notice announcing withdrawal of the final rulemaking action, this action would be withdrawn. EPA received adverse comment within the prescribed comment period.

Therefore, EPA is withdrawing the February 15, 1995 final rulemaking action pertaining to the Pennsylvania SIP for sulfur oxides. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: March 30, 1995.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95–9045 Filed 4–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OAQPS CA38–5–6959; FRL–5184–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the Federal Register on June 2, 1994. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from Pleasure Craft Coating Operations and set general recordkeeping requirements for VOC emissions. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on May 15, 1995.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95814.