APPENDIX A TO PART 950—SCHEDULE OF USER FEES FOR ACCESS TO NOAA ENVIRONMENTAL DATA—Continued

Name of product/data/publication/information/service	Current fee	New fee
NODC Order Consultation Fee	*	2.00
NODC Handling and Packing Fee	*	7.00
World Ocean Database-World Ocean Atlas 2009 DVDs	*	11.00
Additional National Geophysical Data Center (NGDC) User Fees:		
Mini Poster	1.00	1.00
Icosahedron Globe	3.00	.50
Convert Data to Standard Image	5.00	5.00
Single Orbit OLS	16.00	16.00
Single Orbit OLS, Additional Orbits	5.00	5.00
Single Orbit OLS—Subset	16.00	16.00
Single Orbit OLS, Subset—Additional Orbits	5.00	5.00
Geolocated Data	43.00	45.00
Subset of Pre-existing Geolocated Data	26.00	27.00
Global DMSP–OLS Nighttime Lights Annual Composite from One Satellite	70,140.00	73,614.00
Most Recent DMSP–OLS Thermal Band/Cloud Cover Mosaics from Multiple Satellites	238.00	250.00
Nightly DMSP–OLS Mosaics, Visible and Thermal Band Data from One Satellite	223.00	235.00
Global DMSP–OLS Nighttime Lights Lunar Cycle Composite from One Satellite	6,020.00	6,307.00
Radiance Calibrated Global DMSP–OLS Nighttime Lights Annual Composite from One Satellite	77,177.00	81,047.00
Research Data Series CD–ROM/DVD	25.00	25.00
Custom Analog Plotter Prints	60.00	60.00
NOS Bathymetric Maps and Miscellaneous Archived Publication Inventory	7.00	7.00
Global DMSP–OLS Annual Composite of Persistent Nighttime Lights on Monthly Increments from One Satellite	7,665.00	8,032.00
Data Poster	*	18.00
High Definition Geomagnetic Model	*	19,997.00
* Reflects a new product not previously offered.		

[FR Doc. 2010–32404 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–029–FOR; Docket ID No. OSM–2008–0022]

Montana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is approving an amendment to the Montana regulatory program (the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Montana is proposing the addition of guidelines regarding normal husbandry practices to improve operational efficiency and to ensure that the husbandry practices used by the permittee during the period of responsibility for revegetation success and bond liability are normal husbandry practices within the region for unmined lands.

DATES: *Effective Date:* December 27, 2010.

FOR FURTHER INFORMATION CONTACT: Jeff Fleischman, Director, Casper Field Office Telephone: (307) 261–6550 Internet Address: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this [Act] * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this [Act]." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated July 3, 2008, Montana sent OSMRE an amendment to its program (SATS number MT–029–FOR; Administrative Record No. OSM–2008–0022) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment to include the changes made at its own initiative.

We announced receipt of the proposed amendment in the November 10, 2008, **Federal Register** (73 FR 66569). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM–2008–0022–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 10, 2008. We did not receive any comments.

During our review of the amendment, we identified concerns regarding the proposed normal husbandry practices for *Landscaping Activities* and *Erosion and Settling Repair.* We notified Montana of these concerns by letter dated April 16, 2009 (Administrative Record No. OSM–2008–0022–0013). Our concerns are explained in detail in Section III of this notice.

Montana responded in a letter dated May 12, 2009, by sending us a revised amendment (Administrative Record No. OSM–2008–0022–0012). Montana made the appropriate changes to the normal husbandry practices for *Erosion and Settling Repair* and *Landscaping Activities.* The provisions were acceptable to OSMRE.

Based upon Montana's revisions to its amendment, we reopened the public comment period in the August 13, 2009, **Federal Register** (74 FR 40799) and provided an opportunity for a public hearing or meeting on the adequacy of the revised amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 14, 2009. We did not receive any comments.

III. OSMRE's Findings

This section contains our findings concerning the amendment to the Montana program. We are making these findings in accordance with the criteria and procedural requirements of SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

What is Montana proposing to change?

Montana proposes the addition of Normal Husbandry Practices Guidelines to the Administrative Rules of Montana. OSMRE must approve the list of normal husbandry practices that mine operators may employ without restarting the responsibility period prior to application for Phase III bond release. The September 7, 1988, **Federal Register** notice (53 FR 34641) states that OSMRE "would consider, on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as normal husbandry practice" and that the regulatory authority "would be expected to demonstrate (1) that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of [SMCRA]."

The Federal regulations at 30 CFR 816.116(c)(1) for surface mining operations and 817.116(c)(1) for underground mining operations require that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR 816.116(c)(4) and 817.116(c)(4).

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) require that a regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSMRE's Director that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent vegetation success. Approved practices shall be normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

Montana is proposing to add ten categories of normal husbandry practices that will not be considered augmented practices and will not result in the restart of the responsibility period. Each category has an associated list of Standard Conservation Practices currently approved by the Montana State Office of the Natural Resources Conservation Service that will be included as approved normal husbandry practices for the category. These National Resources Conservation Service (NRCS) Standards can be found at *http://www.regulations.gov* (Administrative Record No. OSM–2008–0022–0001).

During our initial review of the amendment proposal, OSMRE identified proposed normal husbandry practices that we determined could not be considered "normal" as defined in 30 CFR 816.116(c)(4) and 817.116(c)(4). These included the proposed normal husbandry practices for *Erosion and Settling Repair* and *Landscaping Activities.* We notified Montana of our concerns by letter dated April 16, 2009 (Administrative Record No. OSM–2008–0022–0009). We delayed final rulemaking to afford Montana the opportunity to submit new material to address the deficiencies. By letter dated May 12, 2009, Montana responded to the concern letter, providing rationale to demonstrate that the proposed guidelines for *Erosion and Settling Repair* and *Landscaping Activities* can be expected to continue as part of the post mining land use, or if discontinuance of the practices after the liability period expires, it will not reduce the probability of permanent revegetation success, as prescribed in 30 CFR 816.116(c)(4) and 817.116(c)(4) (Administrative Record No. OSM–2008–0022–0010). Montana also elected to omit the NRCS practices that were not relevant or that were potentially problematic. Please *see* sections *III.D.* and *III.F.* for more information about the proposed revised sections for *Erosion and Settling Repair* and *Landscaping Activities.* OSMRE announced the reopening of the comment period in the **Federal Register** on August 13, 2009 (74 FR 40799). The comment period closed September 14, 2009. No comments were received.

To remain clear and concise and to eliminate repetition, we have grouped the ten categories of proposed normal husbandry practices as follows: *Interseeding and Supplemental Planting of Tree and Shrub Seedlings* (III.A.); *Mechanical Practices, Supplemental Mulching, Prescribed Burning, Pest Control,* and *Agricultural Activities* (III.B.); *Grazing* (III.C.); *Erosion and Settling Repair* (III.D.); *Development and Maintenance of Water Resources* (III.E.); and *Landscaping Activities* (III.F.). The findings include whether the practice being approved as normal husbandry is subject to an acreage limitation. That is, the practice can be applied only to a percentage of the reclaimed acreage. Other practices have no acreage limitation.

A. *Interseeding and Supplemental Planting of Tree and Shrub Seedlings.* Montana proposes to add the following language regarding *Interseeding and Supplemental Planting:*

> Interseeding is done to enhance revegetation, rather than to augment revegetation. Interseeding is defined as a secondary seeding into established revegetation to improve composition, diversity or seasonality. In contrast, augmented seeding is reseeding with fertilization or irrigation, or in response to unsuccessful revegetation in terms of germination, establishment, or permanence. Interseeding may be used to take advantage of favorable climatic conditions and to enhance germination and establishment of reclamation species requiring extended periods of stratification or other special environmental conditions. Interseeding may also be used to improve or alter the compositional balance between forage species and shrubs, or between warm and cool season grasses.
>
> Interseeding of native species and approved introduced species may be implemented up to six (6) years prior to Phase III bond release for grazing land, fish and wildlife habitat, forestry, or recreation post-mining land uses. Augmented seeding or seeding of introduced and non-native

species other than those approved by the Department is not allowed as a Normal husbandry practice. No reclaimed acreage limit applies to interseeding.

To promote and enhance establishment of wildlife habitats, increase diversity, and improve age-class structure in monotypic stands of trees and shrubs, mine operators may transplant native trees and shrubs and/or plant tree and shrub nursery stock on reclamation units up to six (6) years prior to Phase III bond release for all post-mining land uses. As long as the approved post-mining land use is being met, no reclaimed acreage limit applies to interplanting of native transplants or nursery stock. In all cases, damage to established or emergent vegetation should be avoided. Methods for interseeding both herbaceous and woody species may include hand planting, broadcast, range drill or interseeded applications, and other methods as deemed appropriate by the operator. Chemical fallowing of existing herbaceous perennial vegetation may be employed to reduce competition prior to interplanting of woody species. Operators are encouraged to modify seeding equipment to optimize planting and reduce soil compaction or damage to existing vegetation. Use of livestock for trampling seed and mulch into the soil is also encouraged as an approved husbandry practice.

In support of the proposed practices for *Interseeding and Supplemental Planting of Tree and Shrub Seedlings,* Montana made reference to the following U.S. Department of Agriculture's *Natural Resources Conservation Service (NRCS) Practice Standards for Montana:* Channel Bank Vegetation (322), Critical Area Planting (342), Windbreak/Shelterbelt Establishment (380), Field Border (386), Riparian Herbaceous Cover (390), Riparian Forest Buffer (391), Filter Strip (393), Stream Habitat Improvement and Management (395), Hedgerow Planting (422), Range Planting (550), Tree and Shrub Establishment (612), Restoration and Management of Rare or Declining Habitats (643), Wetland Wildlife Habitat Management (644), Upland Wildlife Habitat Management (645), Early Successional Habitat Development/Management (647), Wetland Restoration (657), Wetland Creation (658), and Wetland Enhancement (659).

OSMRE previously approved similar language as a normal husbandry practice in New Mexico (65 FR 65770, November 2, 2000). The Montana proposal is based on language from the approved New Mexico program.

For regulatory purposes, interseeding is done to enhance revegetation rather than to augment it. Interseeding is defined as a secondary seeding into established revegetation to improve composition, diversity, or seasonality. In contrast, augmented seeding is reseeding with fertilization or irrigation, or in response to unsuccessful revegetation in terms of germination, establishment, or permanence. Based on these references and practices, it is clear that in certain cases, interseeding is desirable to increase the structural and vegetative diversity of the reclaimed lands for wildlife habitat and for rangeland improvement.

OSMRE considers, on a practice-by-practice basis, the administrative record supporting each normal husbandry practice proposed by a regulatory authority (53 FR 34641, September 7, 1988). In 1983, OSMRE considered and rejected the idea of allowing interseeding and supplemental fertilization during the first 5 years of the 10-year responsibility period. While allowing replanting of trees and shrubs "*to utilize the best technology available*" without extending the responsibility period, OSMRE determined that augmented seeding, fertilizing, or irrigation is not allowed during the responsibility period (*See* 48 FR 40156, September 2, 1983.)

However, in 1988, (53 FR 34641, September 7, 1988) OSMRE stated in the context of the Federal regulation at 30 CFR 816.116(c)(4) that seeding, fertilization, or irrigation performed at levels that do not exceed those normally applied in maintaining comparable unmined land in the surrounding area would not be considered prohibited augmentative activities.

This is consistent with the preamble to the 1979 Revegetation Regulations (44 FR 15238, March 13, 1979) which states, "The augmented seeding, fertilizing and irrigation does not apply to cropland and pastureland that can be expected to have a similar postmining use and which should be managed in accordance with acceptable local agricultural practices." This was restated on September 7, 1988, in 53 FR 34640: "* * * the preamble to the 1979 revegetation regulations which explained that fertilization, seeding, and irrigation in accordance with local agricultural practices on cropland or pasture land is not considered a prohibited augmentative practice."

Furthermore, 30 CFR 816.116(c)(4) and 817.116(c)(4) specifically require that any approved husbandry practice must be expected to continue as part of the postmining land use, or if the practices are discontinued after the liability period expires, cessation will not reduce the probability of permanent vegetation success. Therefore, any irrigation or fertilization (such as NRCS Standard *Channel Bank Vegetation, 322*), would have to comply with the spirit and intent of the regulations.

In response to comments received concerning an Ohio program amendment, OSMRE stated that the legislative history of the Act [SMCRA] reveals no specific Congressional intent in the use of the term "augmented seeding." Accordingly, OSMRE's interpretation of augmented seeding is given deference so long as it has a rational basis (*see* 63 FR 51832, September 29, 1998).

Included in the proposal to allow interseeding as a normal husbandry practice are proposed definitions for "augmented seeding" and "interseeding" to distinguish the differences between the two. Interseeding is done to enhance revegetation, rather than to augment revegetation. Montana defines interseeding as a secondary seeding into established revegetation to improve composition, diversity, or seasonality. In contrast, augmented seeding is defined as reseeding with fertilization or irrigation, or in response to unsuccessful revegetation in terms of germination, establishment, or permanence. Interseeding may be used to take advantage of favorable climatic conditions and to enhance germination and establishment of reclamation species requiring extended periods of stratification or other special environmental conditions. Interseeding may also be used to improve or alter the compositional balance between forage species and shrubs, or between warm and cool season grasses.

Interseeding is clearly aimed at establishing species that require special conditions for germination and the establishment or altering of species composition. Montana's discussion of interseeding as a normal husbandry practice further clarifies that interseeding is done to enhance the revegetation, rather than to augment the revegetation. Montana reiterates that interseeding is secondary seeding into established revegetation to improve composition, diversity, or seasonality. In contrast, augmented seeding is reseeding with fertilization or irrigation, or in response to unsuccessful revegetation in terms of germination, establishment, or permanence.

Montana also proposes appropriate time frames limiting the application of interseeding as a normal husbandry practice without restarting the bond liability period, requiring that interseeding of native species and approved introduced species may be implemented up to six (6) years prior to Phase III bond release for grazing land, fish and wildlife habitat, forestry, or recreation post-mining land uses.

While it is OSMRE's desire to encourage wetland development and the

management of such systems in a proper functioning condition, it is also OSMRE's opinion that anything more than minor wetland related work (*see* the referenced NRCS practices cited (wetland restoration (657), wetland creation (658), and wetland enhancement (659)) would need to be completed at least six (6) years prior to Phase III bond release. Appropriate limits on aerial extents and time frames for implementation have been set for all proposed normal husbandry practices that would potentially use the wetland restoration, wetland creation, and wetland enhancement practice standards.

Montana has demonstrated that the proposed normal husbandry practices for interseeding and supplemental planting are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. As appropriate limits on time frames for implementation have been set for all proposed practices, exceeding these limits would result in extending the period of responsibility. For these reasons, OSMRE has determined that the proposed normal husbandry practices for *Interseeding and Supplemental Planting of Tree and Shrub Seedlings* meet the criteria to be approved as normal husbandry practices under 30 CFR 816.116 (c)(4) and 817.116(c)(4). We approve these changes to the Administrative Rules of Montana.

B. *Mechanical Practices, Supplemental Mulching, Prescribed Burning, Pest Control,* and *Agricultural Activities.* Montana proposes to add the following language regarding *Mechanical Practices:*

> Selective cutting, mowing and raking to control weeds, reduce standing dead vegetation or litter, increase decomposition of organic matter, and stimulate vegetative regrowth are approved husbandry practices. These practices are applicable to all post-mining land uses at any time during the liability period. No reclaimed acreage limit applies.

In support of the proposed practices for *Mechanical Practices,* Montana made reference to the following NRCS Practice Standards for Montana: Brush Management (314), Fuel Break (383), Firebreak (394), Forage Harvest Management (511), Grazing Land Mechanical Treatment (548), Upland Wildlife Habitat Management (645), Early Successional Habitat Development/Management (647), Windbreak/Shelterbelt Renovation (650), and Forest Stand Improvement (666).

Montana proposes to add the following language regarding *Supplemental Mulching:*

> Mulching of interseeded areas may be required if little of the original mulch application remains, there is limited organic matter in the root zone material, or potential for accelerated erosion exists. This practice is applicable to all approved post-mining land uses, and must be completed at least six (6) years prior to Phase III bond release. No reclaimed acreage limit applies.

In support of the proposed practices for *Mechanical Practices,* Montana made reference to the NRCS Practice Standard for Mulching (484).

Montana proposes to add the following language regarding *Prescribed Burning:*

> Controlled burning may be used to reduce persistent and common weeds, undesirable vegetation, litter buildup, or weed seed-load on reclaimed lands. Prescribed fire may also be used to reduce vegetative competition and stimulate growth of desired species. This practice is applicable to all post-mining land uses at any time during the liability period. No reclaimed acreage limit applies.

In support of the proposed practices for *Prescribed Burning,* Montana made reference to the NRCS Practice Standards for Prescribed Burning (338) and Firebreak (394).

Montana proposes to add the following language regarding *Pest Control, including weeds, vertebrate and invertebrate animals, fungi and diseases:*

> Prior to implementing control of weeds and other pests, the respective county weed board must approve a comprehensive noxious weed control plan.
>
> Selection of herbicides and mechanical control techniques represents a compromise between affecting the desirable species in reclamation units and controlling invasive and damaging organisms. Application of herbicides to control weeds may be necessary in some cases where steep slopes and rugged terrain prohibit access for mechanical control, fencing for managed grazing, or the use of fire. All herbicide applications, however, must be timed to avoid damage to shrub seedlings and grass seedlings in stages of growth prior to the fourth leaf stage. Both spraying (by hand or from a vehicle), and rope wicking may be used as application techniques. Operators may modify these techniques or use other forms of application.
>
> The use of fire or controlled grazing are generally encouraged for the control of annual brome grasses (*Bromus tectorum* and *B. japonicum*) and annual forbs such as Russian thistle (*Salsola kali*) or kochia (*Kochia scoparia),* because most shrub species will recover from a light fire and/or grazing. Herbicide use, however, may be necessary, when dealing with persistent, deeply rooted perennial species such as the knapweeds (*Centaurea spp.*), Canada thistle (*Cirsium arvense*) or leafy spurge (*Euphorbia esula*). These species typically do not respond to mechanical control or burning. Treatment of species such as salt cedar (*Tamarix ramosissima*) will require extreme caution to prevent herbicide and herbicide residues from entering surface waters or the groundwater. Operators proposing to use restricted chemicals must ensure that these chemicals are applied by certified applicators. This practice is applicable to all post-mining land uses and at any time during the liability period. No reclaimed acreage limit applies.

In support of the proposed practices for *Pest Control,* Montana made reference to the NRCS Practice Standards for Prescribed Burning (338) and Pest Management (595).

Montana proposes to add the following language regarding *Agricultural Activities:*

> Croplands and pasturelands require ongoing management activities. Annual or periodic seeding, fertilizing, irrigating, or other normal agricultural activity carried out on approved cropland or pastureland are such activities. These practices are applicable at any time during the liability period for the listed post-mining land uses, with no reclaimed acreage limits.

In support of the proposed practices for *Agricultural Activities,* Montana made reference to the following NRCS Practice Standards for Montana: Conservation Crop Rotation (328), Residue and Tillage Management (329), Cover Crop (340), Residue Management, Seasonal (344), Residue Management, Mulch Till (345), Residue Management, Ridge Till (346), Field Border (386), Filter Strip (393), Forage Harvest Management (511), Strip Cropping (585), and Nutrient Management (590).

The Montana proposed husbandry practices for *Mechanical Practices, Supplemental Mulching, Prescribed Burning, Pest Control,* and *Agricultural Activities* are based on language in the approved New Mexico program (65 FR 65770).

As proposed, the normal husbandry practices for *Mechanical Practices, Supplemental Mulching, Prescribed Burning, Pest Control,* and *Agricultural Activities* are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. In addition, Montana set an appropriate limit on the time frame for the implementation of the proposed practice for *Supplemental Mulching.* If a permittee exceeded the time limit, the permittee would have to extend the period of liability for demonstrating success of revegetation. OSMRE finds that Montana's proposed normal husbandry practices identified above are consistent with and no less effective than the Federal regulations at 30 CFR 816.116/817.116(c)(1) and (4) in meeting

the requirements of SMCRA. We approve the proposed changes.

C. *Grazing.* Montana proposes to add the following language regarding *Grazing:*

> Livestock grazing is a standard land use and is a management tool that can be successfully used to increase plant diversity and production, as well as improve the overall health of a particular vegetative stand. On the Montana coal lands, grazing is primarily limited to cattle; however, grazing by sheep, goats or horses should also be considered when specific vegetation objectives are desired. The operator may use grazing to remove dead materials, harvest production, and stimulate vegetative growth as a husbandry practice.
>
> This practice is applicable to cropland, pastureland, grazing land, fish and wildlife habitat, forestry, and recreation post-mining land uses. Grazing may be conducted at any time during the liability period.

Montana proposes to include the NRCS Standards for Fence (382) and Prescribed Grazing (528) to support *Grazing.*

Montana's proposal makes it clear that grazing is a management tool used to meet particular objectives, including increased plant diversity, overall vegetative health, removal of dead (plant) material, harvest production, and the stimulation of vegetative growth.

It is also inherent in the approval that management will be within the bounds of normal husbandry practices within the region for unmined lands with similar uses regardless of whether or not a grazing plan, a grazing monitoring plan, or yearly recalculations of carrying capacities and stocking rates are performed.

Montana limits the practice of *Grazing* to the following postmining land uses: Cropland; pastureland; grazing land; fish and wildlife habitat; forestry; and recreation.

Montana demonstrates that the NRCS standard practices proposed for *Grazing* are the usual or expected state, form, amount, or degree of management performed habitually or customarily to prevent exploitation, destruction, or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands within the region having land uses similar to the approved postmining land use of the disturbed area. The proposed normal husbandry practices for *Grazing* meet the criteria for approval under 30 CFR 816/817.116(c)(4). We, therefore, approve the proposed language.

D. *Erosion and Settling Repair.* Montana proposes to add the following language regarding *Erosion and Settling Repair:*

> Repair of rills, gullies, headcuts or similar erosional features is sometimes necessary. Settling of reclaimed spoils creates depressions, sink holes and linear features. Additionally, settling along pipelines, underground utilities, *etc.* often results in undesirable features. Features to be repaired must be characteristic of unmined lands in the region and the damage must not be caused by a lack of planning, design, or implementation of the mining and reclamation plan. When deciding whether a particular erosion feature should be repaired the operator should consult the Department's Guidelines on Erosional Features. The use of fertilization or other facilitating practices (*i.e.* irrigation), as mentioned in some Normal husbandry practices (*e.g.* 342—Critical Area Planting and 412—Grassed Waterway) will not be approved unless it can be demonstrated that the practice will continue as part of the postmining land use or if discontinuance of the practice after the liability period expires will not reduce the probability of permanent vegetation success.
>
> Repairs considered to be normal husbandry practices include hand work with shovels and similar tools, mechanical manipulation of small areas (including hauling fill into small areas of settling), installation of erosion-control matting, sediment filtration (silt fence, hay or straw bales, rock berms, check dams, *etc.*), hand, broadcast and drill seeding of small areas, and raking. This practice is applicable to all post-mine land uses at any time during the liability period. No more than 10% of the respective reclaimed unit may be repaired as a normal husbandry practice. If erosion and settling repairs are required on more than 10%, the liability period will be reinitiated. Erosion and settling repairs completed prior to the initiation of the 10-year liability period are not included in the 10%.

Montana proposes to include the NRCS Standards for Channel Bank Vegetation (322), Critical Area Planting (342), Stream Habitat Improvement and Management (395), Grassed Waterway (412), Use Exclusion (472), Range Planting (550), Heavy Use Area Protection (561), Streambank and Shoreline Protection (580), and Channel Stabilization (584) to be used for *Erosion and Settling Repair.*

Guidance concerning the repair of rills and gullies is found in the September 2, 1983, **Federal Register** notice (48 FR 40157). Here OSMRE states that the regulatory authority could allow the repair of rills and gullies as a husbandry practice without restarting the liability period only if the general standards of 30 CFR 816/817.116(c)(4) are met and after consideration of the normal conservation practices within the region.

Montana's proposed language for *Erosion and Settling Repair* is similar to language approved for New Mexico's Program in 65 FR 65770 (November 2, 2000). Montana is specific regarding the unit percentage of area that may be repaired (no more than ten percent), noting that if erosion and settling repairs are required on more than ten percent of the reclaimed unit, the liability period will be reinitiated. Montana satisfactorily demonstrates that the proposed normal husbandry practices for *Erosion and Settling Repair* are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. We find that Montana's proposed normal husbandry practices for *Erosion and Settling Repair* are consistent with and no less effective than the Federal regulations at 30 CFR 816/817.116(c)(4) in meeting the requirements of SMCRA, and we approve them.

E. *Development and Maintenance of Water Resources.* Montana proposes to add the following language regarding *Development and Maintenance of Water Resources:*

> Water resources may be developed to provide for better livestock distribution, seasonal wildlife habitat, or to take advantage of a naturally occurring situation, such as a spring or seep that develops in reclamation. Normal maintenance (cleaning, repair, upgrading, stabilizing with rock, and interseeding or replanting of vegetation) and protection (fencing and animal exclusion) of developed water resources, their shorelines, and the structures associated with developed water sources is considered a normal husbandry practice.
>
> This practice is applicable to either water sources that can be developed or to water sources that have been developed for all approved post-mining land uses. Cleaning, repair, and upgrading may be conducted at any time during the liability period, with no reclaimed acreage limits. Ponds or permanent impoundments must be permitted in accordance with ARM 17.24.504 and 17.24.642. New development of ponds, wells, or any activity that requires stabilization, interseeding, or replanting must be completed at least six (6) years prior to Phase III bond release and is limited to no more than 10% of the reclaimed acreage in the bond release unit.

The proposed language lists the NRCS Standards for Channel Bank Vegetation (322), Critical Area Planting (342), Ponds (378), Fence (382), Grassed Waterway (412), Dry Hydrant (432), Micro-irrigation Systems (441), Sprinkler Irrigation Systems (442), Surface and Subsurface Irrigation Systems (433), Water Management Irrigation system (449), Use Exclusion (472), Spring Development (574), Streambank and Shoreline Protection (580), Channel Stabalization (584), Watering Facility (614), Water Harvesting Catchment (636), Water Well (642), and Shallow Water Development and Management (646) as practices used to develop and maintain water resources.

As previously mentioned, in 1983, OSMRE considered and rejected the idea of allowing interseeding and supplemental fertilization during the first 5 years of the 10-year responsibility period. While allowing replanting of trees and shrubs "to utilize the best technology available" without extending the responsibility period, OSMRE determined that augmented seeding, fertilizing, or irrigation is not allowed during the responsibility period (48 FR 40156, September 2, 1983.)

However, in 1988, (53 FR 34641, September 7, 1988) OSMRE stated, in the context of the Federal regulation at 30 CFR 816/817.116(c)(4), that seeding, fertilization, or irrigation performed at levels that do not exceed those normally applied in maintaining comparable unmined land in the surrounding area would not be considered prohibited augmentative activities.

This is consistent with the preamble to the 1979 revegetation regulations (44 FR 15238, March 13, 1979) which states that "the augmented seeding, fertilizing and irrigation does not apply to cropland and pastureland that can be expected to have a similar postmining use and which should be managed in accordance with acceptable local agricultural practices." This was restated on September 7, 1988, in FR 53 3640, which states, "* * * the preamble to the 1979 revegetation regulations which explained that fertilization, seeding, and irrigation in accordance with local agricultural practices on cropland or pasture land is not considered a prohibited augmentative practice."

Furthermore, 30 CFR 816/817.116(c)(4) specifically requires that any approved husbandry practice must be expected to continue as part of the postmining land use, or if the practices are discontinued after the liability period expires, cessation will not reduce the probability of permanent vegetation success.

Therefore, any irrigation, fertilization, or seeding such as those used in the incorporated NRCS Practices for Channel Bank Vegetation (322), or Critical Area Planting (342), or the NRCS Practices relating to irrigation, *etc.,* would have to comply with the Federal regulations at 30 CFR 816/817.116(c)(1) and (c)(4).

It is OSMRE's desire to encourage wetland development and the management of such systems in a proper functioning condition. Therefore, all Federal, State, and local laws and regulations need to be adhered to when working in aquatic or wetland systems, and/or in ways that might affect water quality. Impacts to existing hydrology will need to be assessed (*e.g.* Code 378—Ponds).

Montana demonstrates that the proposed practices for the *Development and Maintenance of Water Resources* are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. As appropriate limits on time frames and acreages for implementation have been set for all proposed practices, exceeding these limits would result in extending the period of responsibility. This proposed language meets the criteria to be approved under 30 CFR 816/817.116(c)(4). We approve this proposed change to the Administrative Rules of Montana.

F. *Landscaping Activities.* Montana proposes to add the following language regarding *Landscaping Activities:*

> Periodic landscaping or vegetation management activity can be carried out on approved pastureland, grazing land, fish and wildlife habitat, forestry, recreation, industrial, or residential post-mining land uses. Practices which do not involve the establishment of new vegetation (seeding and planting) are applicable at any time during the liability period, with no reclaimed acreage limits. Practices which involve seeding or planting must be completed at least six (6) years prior to Phase III bond release. No reclaimed acreage limit applies.

Initially, Montana proposed the following NRCS Standards to support Landscaping Activities: Fuel Break (383), Firebreak (394), Hedgerow Planting (422), Irrigation System, Micro-irrigation (441), Irrigation System, Sprinkler (442), Irrigation System, Surface and Subsurface (443), Irrigation Water Management (449), Stream Crossing (578), Tree, Shrub Establishment (612), Windbreak/Shelterbelt Renovation (650), Wetland Restoration (657), Wetland Creation (658), Wetland Enhancement (659), and Forest Stand Improvement (666).

The Standard Conservation Practices that Montana referenced in its original amendment proposal relating to *Irrigation,* specifically Micro-irrigation Systems (441), Sprinkler Irrigation Systems (442), Surface and Subsurface Irrigation Systems (443), and Water Management Irrigation Systems (449), did not meet the requirements of 30 CFR 816/817.116(c)(4), which specifically exclude augmentative irrigation as being approved as a normal husbandry practice.

The preamble to the 1979 revegetation regulations (44 FR 15238, March 13, 1979) clearly states, "The augmented seeding, fertilizing and irrigation does not apply to cropland and pastureland that can be expected to have a similar postmining use and which should be managed in accordance with acceptable local agricultural practices." This was restated on September 7, 1988, in FR 53, 3640: "* * * the preamble to the 1979 revegetation regulations which explained that fertilization, seeding and irrigation in accordance with local agricultural practices on cropland or pasture land is not considered a prohibited augmentative practice."

In our concern letter dated April 16, 2009 (Administrative Record No. OSM–2008–0022–0013), OSMRE requested that Montana justify why irrigation would be applicable to all land uses without extending the period of responsibility, or define when and for what land use such irrigation practices would be applicable under the constraints cited in the regulations, thereby specifying when such irrigation practices could be reasonably considered to be a normal husbandry practice.

OSMRE reminded Montana that anything more than minor wetland related work (wetland restoration (657), wetland creation (658), and wetland enhancement (659)), or any activity that requires more than minor stabilization, interseeding, or replanting would need to be completed at least six (6) years prior to Phase III bond release.

Regarding the Stream Crossings (578), OSMRE felt that this NRCS standard was overly broad and far-reaching. We requested that Montana explain why stream crossings would be applicable to all crossing types cited in the incorporated NRCS reference, at any time during the liability period without extending the period of responsibility; or define reasonable limits. Of particular concern are large projects, such as a bridge associated with a road crossing that might be installed near the end of the liability period. OSMRE believes that, in general, stream crossings should be restricted and clearly stated under what conditions and what types of stream crossings should be included, or at least which would be prohibited. OSMRE requested that Montana include some reasonable time limit before a Phase III bond release beyond which any stream crossings would be prohibited, so as to demonstrate the stability of such crossings and that no negative consequences are reasonably likely after Phase III bond release.

In Montana's May 12, 2009, response letter (Administrative Record No. OSM–2008–0022–0012), the State elected to eliminate the following NRCS Standards for Landscaping Activities: Hedgerow Planting (422), Irrigation System, Micro-irrigation (441), Irrigation System, Sprinkler (442), Irrigation System,

Surface and Subsurface (443), Irrigation Water Management (449), Stream Crossing (578), Tree, Wetland Restoration (657), Wetland Creation (658), and Wetland Enhancement (659).

Montana expressed that proposals for the use of irrigation systems will be addressed during the permitting or permit revision process and will be required to address OSMRE's limitations on the use of irrigation for landscaping activities. Montana proposed to delete the Stream Crossing standard (578) as it is essentially irrelevant to reclamation activities at Montana coal mines. Additionally, Montana responded to OSMRE's concern regarding Wetland Restoration (657), Wetland Creation (658), and Wetland Enhancement (659) by deleting these standards from the list of standards used to support *Landscaping Activities,* as they will be addressed through normal reclamation practices and time frames.

As a result of Montana's May 12, 2009, response to our concern letter dated April 16, 2009, OSMRE approves *only* the following NRCS Standards for *Landscaping Activities:* Fuel Break (383), Firebreak (394), Tree, Shrub Establishment (612), Windbreak/ Shelterbelt Renovation (650), and Forest Stand Improvement (666).

For the proposed normal husbandry practice of *Landscaping Activities,* Montana referenced the NRCS supplements which support the use of these practices as normal husbandry for the region and set appropriate limits on time frames for implementation for all proposed practices. Exceeding these limits would result in extending the period of responsibility.

Montana thus has demonstrated that the proposed normal husbandry practices listed for *Landscaping Activities* are normal husbandry practices within the region for unmined lands having land uses similar to the approved post mining land use of the disturbed area. The changes that Montana made to the normal husbandry practice for *Landscaping Activities* meet the requirements for approval under 30 CFR 816/817.116(c)(4). We approve the proposed changes.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. OSM–2008–0022–0001), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. OSM–2008–0022–0014). We did not receive any comments from other Federal agencies.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued 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 Montana proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. We did, however, solicit comments from EPA in a letter dated October 3, 2008 (Administrative Record No. OSM–2008–0022–0014). We received an e-mail on October 20, 2008 (Administrative Record No. OSM–2008–0022–0016), notifying OSMRE that the EPA did not plan to review the proposed changes because they did not pertain to air or water quality standards.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Since this amendment has no effect on historic properties, OSMRE was not required to request comments from the SHPO and the ACHP. We did not request comments from the ACHP. The Montana SHPO was notified of the amendment proposal by a letter dated October 3, 2008, soliciting comments (Administrative Record No. OSM–2008–0022–0014), but did not submit any comments regarding this amendment proposal.

V. OSMRE's Decision

Based on the above findings, we approve Montana's July 3, 2008, proposed amendment for Normal Husbandry Practice Guidelines, as revised on May 12, 2009. We find that the proposed normal husbandry practices will not extend the period of responsibility for revegetation success and bond liability, and the proposed practices can be expected to continue as part of the postmining land use. If the practices are discontinued after the liability period expires, the probability of permanent vegetation success will not be reduced. The proposed practices listed for each category are normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSMRE'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 change of an approved State program be submitted to OSMRE for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSMRE. In the oversight of the Montana program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Montana to enforce only those approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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 because each program is drafted and

promulgated by a specific State, not by OSMRE. 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.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR 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) *et seq.*).

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. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which 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. 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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or Tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 8, 2010.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

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

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 926.15 Approval of Montana regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
July 3, 2008	December 27, 2010	Normal husbandry practices.

[FR Doc. 2010–32418 Filed 12–23–10; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–051–FOR; Docket ID No. OSM–2009–0013]

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the North Dakota regulatory program (the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). North Dakota proposes revisions to rules and statutes that will allow the revegetation responsibility period to be reduced from ten years to five years for lands eligible for remining. North Dakota intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

DATES: *Effective Date:* December 27, 2010

FOR FURTHER INFORMATION CONTACT: Jeffery Fleischman, Field Office Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B Street, Room 1018, Casper, Wyoming 82604–1018, 307–261–6552, *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, 934.16, and 934.30.

II. Submission of the Proposed Amendment

By letter dated November 12, 2009, North Dakota sent us an amendment to its program (Amendment number XXXVIII, Administrative Record Docket ID: OSM–2009–0013) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the amendment on its own accord. The amendment reduces the reclamation liability period on previously mined areas from ten full years to five full years. The Federal regulations at 30 CFR 816.116 provide incentives for eligible remining operations including reduced revegetation responsibility periods (2 years in the East and 5 years in the West).

Specifically, North Dakota proposes revisions to the North Dakota Century Code at Chapter 38–14.1–24(18) (Environmental protection performance standards) and to the North Dakota Administrative Code at Article 69–05.2–09–02(14) (Permit applications—operation plans—maps and plans) and Article 69–05.2–22–07(2) and (4)(i) (Performance standards—Revegetation—Standards for success).

North Dakota proposes to reduce the reclamation liability period on previously mined areas from ten years to five years. This change will apply to the North Dakota Century Code as well as the North Dakota Administrative Code. North Dakota defines previously mined areas as "lands that were affected by coal mining activities prior to January 1, 1970." North Dakota also proposes to require permit applications that include previously mined areas to include additional maps and information addressing potential environmental and safety problems that might occur at the mining site.

We announced receipt of the proposed amendment in the February 9, 2010, **Federal Register** (Vol. 75, No. 26, FR page number 6330). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Docket ID: OSM–2009–0013).

We did not receive any comments. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 11, 2010.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Revisions to North Dakota's Rules and Statutes That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and/or SMCRA

North Dakota proposed revisions to the following rules containing language that is the same as or similar to the corresponding section of the Federal regulations. North Dakota Administrative Code (NDAC) 69–05.2–22–07 (30 CFR 816.116), Performance standards—Revegetation—Standards for success.

North Dakota proposes for areas meeting the definition of previously mined area to require a five year liability period for revegetation success. All other areas in North Dakota have a ten year liability period. The Federal regulations at 30 CFR 818.116 allow the same five year period.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations and we approve it.

B. Revisions to North Dakota's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

North Dakota Century Code Chapter (NDCC) 38–14.1–24(18) (SMCRA Section 515(20)(B)), Environmental Protection Performance Standards.

North Dakota proposes to add a definition for "previously mined areas." The definition would adopt January 1, 1970, the effective date of North Dakota's first reclamation law, as the cut-off eligibility date for lands eligible for remining. Previously mined areas are those that were mined prior to January 1, 1970. The Federal definition of previously mined areas are those mined prior to August 3, 1977, and for which investigation reveals, are not reclaimed to the standards of SMCRA. Under North Dakota's proposed definition far fewer lands would be considered but