

any soil. So the question is whether the disturbed area must all be resoiled to the same thickness.

The preamble to the Federal regulation (48 FR 22100; May 16, 1983) included a discussion of this issue. Concern was expressed by a commenter that uniform soil depths might lead to monocultures and be incompatible with reclamation objectives. In response, OSM modified the final rule to add that redistribution would be to an approximately uniform thickness "consistent with the approved postmining land use" and final graded contour. We note that native undisturbed soils exhibit a great range of depths within small areas, reflecting both topographic impacts and biotic influences, and soil depth range contributes to the premine plant communities and landscape diversity. Efforts to reconstruct the premining ecosystem should thus also include varying replaced soil depths to reflect topography, the various plant communities to be obtained by revegetation, and postmining land use. The Montana rules at ARM 17.24.313(4)(c)(ii) require such soil replacement depths to be specified in the permit application. We note that the majority of reclamation in Montana is directed to the postmining land uses of grazing and wildlife habitat, with the goal of achieving diverse plant communities, for which varying soil depths are appropriate. On lands with postmining land uses where approximately uniform soil replacement depths are appropriate (such as cropland or pasture), Montana would retain the authority to require such approximately uniform depths.

Because Montana has retained the requirement that soil be redistributed in a manner that achieves thicknesses consistent with soil resource availability and appropriate for the postmining vegetation, land uses, contours, and surface water drainage patterns, we find that the proposed deletion of the requirement for approximate uniform thickness does not render the Montana program less effective than the Federal requirements in achieving the purposes of SMCRA.

C.25. ARM 17.24.711(1) Establishment of vegetation (30 CFR 816/817.111)

Montana proposed to move from ARM 17.24.716(2) two requirements: that the revegetation consist of predominantly native species and that the revegetation be capable of self-regeneration. We agree with Montana that those requirements make more sense in this rule, stating general performance standards, than in the latter rule about revegetation

methods. Accordingly, we approve this revision.

Montana also proposed to add exceptions to the "predominantly native" requirement as provided in MCA 82-4-233(4) or 82-4-235(2). The first of these is a provision that, for some operations (those seeded between SMCRA's initial regulatory date and January 1, 1984), introduced species are considered by Montana to be necessary and desirable to achieve the postmining land use and may constitute a major or dominant component of the revegetation. This provision was approved by OSM on June 12, 2001 (66 FR 31530, 31531; Finding 3). The provision at MCA 82-4-235(2) provides a similar allowance, and supplemental planting without restarting the bond liability period, for areas disturbed prior to SMCRA regulation. It was approved by OSM on January 22, 1999 (64 FR 3604, 3608; Finding 8). The revision proposed at ARM 17.24.711(1) implements these previously-approved statutory exemptions, and is therefore not inconsistent with the Federal requirements. Therefore, we approve this revision.

C.26. ARM 17.24.716(2), (5) Method of revegetation (30 CFR 816/817.111)

As noted in the finding above, Montana proposed to move two requirements from paragraph (2) of this rule to ARM 17.24.711: that the revegetation consist of predominantly native species and that the revegetation be capable of self-regeneration. This revision was approved in that finding. Other descriptors proposed for deletion here (*e.g.* permanent, diverse) are duplicated in the earlier rule, and we also approve those deletions.

Montana also proposed in paragraph (2) to: (1) Change a requirement for Department approval of seeding other than on the contour to a requirement that seeding be done on the contour whenever possible; and (2) delete an allowance for drill seeding in separate rows according to Soil Conservation Service (now known as Natural Resources Conservation Service) guidelines. These existing requirements provided more detail than is contained in the Federal requirements at 30 CFR 816/817.22 and .111-.114. Therefore, deletion of these more specific provisions is not inconsistent with the Federal requirements and we approve them.

At subparagraph (5)(b), Montana proposed to add two allowances for introduced species intended to implement two statutory revisions previously approved by OSM. For the same reasons discussed in the finding

above on ARM 17.24.711, we approve the revisions proposed here.

C.27. ARM 17.24.733(3) Measurement Standards for Woody Plants (30 CFR 816/817.116(b)(3))

Montana proposed to delete a provision requiring that, when counting woody plants with multiple stems, only the tallest stem may be counted. There is no Federal counterpart for the provision proposed for deletion.

We agree with Montana's statement that it is often difficult to determine which multiple stems constitute one individual, and hence difficult to obey the provision. Further, as long as the same techniques are used for both determining success standards and measuring success against those standards, determination of revegetation success is not hindered. Therefore, we find that the proposed deletion does not render the Montana program less effective than the Federal regulations and we approve the revision.

C.28. ARM 17.24.825(3) Alternate Reclamation: Alternate Revegetation (30 CFR 816/817.116(b)(2))

In this paragraph, Montana proposed to revise one method of determining revegetation success standards for non-prime farmland cropland from target yields under ARM 17.24.815(2) to technical standards from historical data under 17.24.724(5). We note that success standards for prime farmlands are those specified at ARM 17.24.815(2). The success standards addressed in this revision are for non-prime cropland, and need not address the requirements for prime farmland.

The Federal regulations at 30 CFR 816/817.116(b)(2) require only that, in determining whether revegetation meets the premining vegetation, either a reference area or other success standards be specified by the regulatory authority. We find that the reference to technical standards derived from historic data meets these requirements. Therefore, we approve the revision.

C.29. ARM 17.24.901 and .911 Underground Mining, General Application Requirements and Subsidence Control (30 CFR 784.20, 817.121, 817.41(j))

Montana proposed revisions to these sections in response to OSM's letter (June 5, 1996) in accordance with 30 CFR part 732, which informed Montana of changes needed to its program to implement the provisions of the Energy Policy Act for subsidence protection and water supply restoration in connection with underground mines.