

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 95-AWP-44]

**Establishment of Class E Airspace; Montague, CA**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action establishes Class E controlled airspace for Siskiyou County Airport, Montague, CA. The establishment of Class E airspace 1,200 feet or more above ground level (AGL) is necessary to provide controlled airspace for Instrument Flight Rules (IFR) operations, specifically the departure procedure from runway 35 for Siskiyou County Airport. In addition, this action corrects two minor errors to the geographical coordinates for this airspace designation.

**EFFECTIVE DATE:** 0901 UTC, December 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Debra Trindle, Airspace Specialist, Airspace Branch, AWP-521.10, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6613.

**SUPPLEMENTARY INFORMATION:****History**

On January 8, 1996, the FAA published a Notice of Proposed Rulemaking (NPRM) to amend Class E Airspace at Siskiyou County Airport to provide adequate controlled airspace for IFR operations (61 FR 550). The proposed airspace action was published as an amendment to existing airspace and should have been published as a proposal to establish additional airspace. The existing Class E airspace does not require an amendment. The establishment of additional Class E airspace 1,200 feet or more AGL is necessary to provide controlled airspace for IFR operations, specifically the departure procedure from runway 35 for Siskiyou County Airport.

After issuance of the original NPRM, the FAA discovered this error in the proposal. Therefore, on June 18, 1999, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM), which corrected this error and reopened the comment period (64 FR 32828). Again, interested parties were invited to participate in this proposed rulemaking by submitting such written data, views, or arguments

as they may desire. No comments were received.

Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

**The Rule**

This amendment to 14 CFR part 71 establishes Class E airspace 1,200 feet or more AGL, at Siskiyou County Airport, Montague, CA. Additionally, this rule corrects two minor errors in the geographical coordinates in the new airspace description for Siskiyou County Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adaption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows.

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AWP CA E5 Montague, CA [New]**

Montague, Siskiyou County Airport, CA  
(Lat. 41°46'54" N, long. 122°28'05" W)

Montague NDB  
(Lat. 41°43'38" N, long. 122°28'55" W)

Klamath Fall VORTAC  
(Lat 42°09'12" N, long. 121°43'39" W)

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of Siskiyou County Airport. That airspace extending upward from 1,200 feet above the surface within 8.3 miles east and 5.2 miles west of the 356° and 176° bearings from the Montague NDB, extending from 7 miles north to 1 mile south of the NDB and within 8.3 miles east and 5.2 miles west of the 180° bearing from the Montague NDB, extending from the NDB to 16.5 miles south of the NDB, and from lat 41°52'23" N, long. 122°24'32" W, thence clockwise along the 34.8 mile radius of Klamath Falls VORTAC to lat 42°13'02" N, long 122°30'11" W, to lat 42°11'00" N, long. 122°16'30" W, to lat 41°51'00" N, long. 122°22'02" W and thence counterclockwise along the 6.1 mile radius of the Siskiyou County Airport to the point of beginning

\* \* \* \* \*

Issued in Los Angeles, California on October 27, 1999.

**Dawna J. Vicars,**

*Assistant Manager, Air Traffic Division, Western Pacific Region.*

[FR Doc. 99-29145 Filed 11-5-99; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 934**

[ND-038-FOR, Amendment No. XXVII]

**North Dakota Regulatory Program**

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

ACTION: Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the North Dakota regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

North Dakota proposed revisions to rules for the definition of replacement of water supply, the issuance of rules, consolidation for multiple permit operations, the submission of an annual map to the Commission for all permit areas, and performance standards for the disposal of noncoal wastes. North Dakota intends to revise its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** November 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Guy Padgett, Telephone: (307) 261-6550, Internet address: GPadgett@OSMRE.GOV.

**SUPPLEMENTARY INFORMATION:**

### **I. Background on the North Dakota Program**

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

### **II. Proposed Amendment**

By letter dated September 2, 1998, (Administrative Record No. ND-BB-01) North Dakota sent us an amendment to its program under SMCRA. North Dakota's amendment was in response to a July 17, 1997 letter (administrative record No. ND-BB-02) that we sent in accordance with 30 CFR 732.17(c), and in response to the required program amendments at 30 CFR 934.16(cc), and at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise and add were: (1) NDAC 69-05.2-01-02.90, Replacement of water supply; (2) NDAC 69-05.2-01-03, publication of hearing notices; (3) NDAC 69.05.2-05-09, Permit Applications—Consolidation for multiple permit operations; (4) NDAC 69-05.2-09-09, Permit applications—Operation plans—Surface water management—Ponds, impoundments, banks, dams, embankments, and diversions; (5) NDAC 69-05.2-13-02, Performance standards—General requirements—Annual map; (6) NDAC 69-05.2-13-08, Performance standards—General requirements Protection of fish, wildlife, and related environmental values; (7) NDAC 69-05.2-15-02, Performance standards—Suitable plant growth material—Removal; (8) NDAC 69-05.2-15-04, Performance standards—Suitable

plant growth material—Redistribution; (9) NDAC 69-05.2-16-09, Performance standards—Hydrologic balance—Sedimentation ponds; and (10) NDAC 69-05.2-19-04, Performance standards—Waste materials—Disposal of noncoal wastes.

We announced receipt of the amendment in the September 21, 1998, **Federal Register** (63 FR 50177). In the same document we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. Because no one requested a public hearing or meeting, we did not hold one. The public comment period closed on October 21, 1998.

### **III. Director's Findings**

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. As discussed below, in accordance with SMCRA and 30 CFR 732.15 and 732.17, we find that the proposed program amendment submitted by North Dakota on September 2, 1998, is no less effective than the corresponding Federal regulations. Accordingly, we approve the proposed amendment.

1. *NDAC 69-05.2-01-02.90, Replacement of water supply.* North Dakota submitted a definition of "Replacement of Water Supply," in accordance with the Federal definition at 30 CFR 701.5 and pursuant to a June 5, 1996 letter from OSM (administrative record No. ND-BB-13).

The proposed definition is very similar to the OSM definition except for the last part. Paragraph b(2) of the definition places additional requirements on a mining company when the water supply is not needed and the water supply owner waives the replacement of a premine water delivery system. The new language will require mining companies, when applying for final bond release, to provide public notice if the landowner waives the replacement of a premine water delivery system. The waiver would have to be clearly discussed in a newspaper advertisement and in letters that the mining company must provide as part of the bond release process. Based on comments received by the State on the final bond release application, the Commission will decide if a replacement water delivery system is needed to protect the public interest. If the Commission determines that a replacement water delivery system is needed, it would have to be installed by the mining company prior to the Commission granting final bond release. Providing the notice as part of the bond

release process also gives interested persons the opportunity to request an informal conference on the bond release application and a formal hearing on the Commission's bond release decision. In accordance with Section 505(b) of SMCRA and the Federal regulations at 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations that are more stringent than those imposed under SMCR and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations of surface coal mining and reclamation operations for which no federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11(b) dictate that such provisions shall not be construed to be inconsistent with the Federal program. Accordingly, the Director is approving the proposed revision to 69-05.2-01-02.90.

2. *NDAC 69-05.2-01-03, Publication of hearing notices.* Current NDAC 69-05.2-01-03(5) deals with public hearings required in connection with the proposal of the issuance, amendment, or repeal of a rule and provides as follows:

The commission will publish notice of hearing twice in the official newspapers of each county in which surface coal mining operations occur and each daily newspaper of general circulation in the state. The commission will file the notice of hearing with the legislative council. The commission will cause the first publication and the filing with the legislative council to occur at least thirty days before the hearing.

The State proposed to change the provision to require that the commission will cause the last (rather than the first) publication, as well as the filing with the legislative council, to occur at least thirty days before the hearing. This change is being made to be consistent with legislative changes to North Dakota's Administrative Practices Act and will result in more advance notice of hearings. There is no Federal counterpart regulation. This proposed rule is not inconsistent with any provision of the Federal program; therefore, we approve it.

3. *NDAC 69.05.2-05-09, Permit Applications—Consolidation for multiple permit operations.* There is no federal counterpart to this proposed rule. The current North Dakota rule allows permit monitoring plans to be consolidated into a single plan if a plan covers multiple permits. Most mines in North Dakota are incrementally permitted and therefore have multiple permits that apply to a given mine site.

Each of these permits contains nearly identical surface water, ground water, and wildlife monitoring plans. Any revision to the consolidated plan requires the filing of only one revision (to the most recently issued permit) rather than multiple revisions. We approved North Dakota's use of consolidated monitoring plans in the April 13, 1995 **Federal Register** (60 FR 18744, administrative record No. ND-BB-16). North Dakota's proposed revision would give the North Dakota Public Service Commission discretion to allow other required permit information and plans to be consolidated into a single document that covers more than one permit. Some examples of other permit information that could be appropriately consolidated are ownership and control information, violation history, lease information, permit and license listings.

North Dakota believes that consolidation is logical and appropriate where the same information applies to more than one permit. Thus consolidation would save time and effort for both the permittee and the State with no loss of information required by the approved State Program. The Commission would not allow the consolidation of site-specific mining and reclamation plans that apply to only one permit and therefore would not be appropriate for consolidation.

In a September 30, 1999 telephone conversation with Jim Deutsch, director of North Dakota Public Service Commission's Reclamation Division (administrative record No. ND-BB-17), Mr. Deutsch stated that the proposed rule has similar requirements and the same rationale that was submitted in writing to us with State Program Amendment ND-31-FOR (North Dakota amendment XXI) which OSM approved in the April 13, 1995 **Federal Register** (60 FR 18744, administrative record No. ND-BB-16). As outlined in the April 13, 1995 **Federal Register**, each consolidated document would be subject to the following requirements:

1. The consolidation of information and plans will be limited to sections of the permit application where the same information and plans cover more than one permit area. Each consolidated document will be subject to the approval procedures established for permit revisions.

2. Each mining permit must be revised to describe the specific information and plans to be consolidated into a single document covering the entire surface coal mining and reclamation under permit.

3. Each consolidated document is subject to review by the Commission at

the time of the midterm review or renewal for each permit covered by the consolidated document in accordance with section 69-05.2-11-01.

4. A permittee may propose modifications to a consolidated document by filing a permit revision application to the most recently issued permit covered by the consolidated document.

In addition, a separate consolidated plan would have to be developed for each category of plans (e.g., violation history, lease information, permit and license listings, ownership and control information). This would allow for easier review of the consolidated plans by both the regulatory authority and the public where one mine is covered by multiple permits.

Also, individual permits would contain appropriate references to the various consolidated plans and the consolidated plans would be part of each permit. Since consolidated plans will be considered part of each mining permit they cover, failure to comply with the consolidated plans will subject the permittee to the same enforcement action as would the failure to comply with any other part of a mining permit. A single violation would be issued that lists all permits covered by the consolidated plan. North Dakota uses this same practice for violations of performance standards or requirements that are the same in more than one permit.

Since consolidated plans may have to be revised, the reference in each permit must be to the most current consolidated plan. North Dakota will review each consolidated plan as part of its midterm and permit renewal reviews and will require any necessary revisions that result from these reviews. The North Dakota Public Service Commission is not precluded from reviewing permits an requiring permit revisions more frequently than at midterm or permit renewal (every five years). This applies to more frequent reviews of consolidated plans if necessary. The permittee may request revision of a consolidated plan by applying for a permit revision to the most recently issued permit covered by the consolidated plan. When new areas are added to a mining operation by application for new permits, the consolidated plan for the operation will have to be updated, and the updated consolidated plan will be subject to the approval procedures for permit applications. Following final bond release of any portion of the area covered by the consolidated plan, the permittee would have to continue monitoring that area (and/or continue

complying with the applicable consolidated plan) until the consolidated plan was revised to delete the released area from the applicable plan(s).

Based upon the above discussion, this proposed rule is not inconsistent with the Federal regulations; therefore, we approve it.

4. *NDAC 69-05.2-09-09, Permit application—Operation Plans—Surface Water Management—Ponds, impoundments, banks, dams, embankments, and diversions.* North Dakota is proposing to have operators submit a general surface water management plan that identifies and describes each water management structure and provides preliminary technical information on the structures. North Dakota's rules do not use the term, "siltation structure," which is used in the Federal regulations. Use of that term, however, is not mandatory. Both North Dakota's rules and the Federal rules, however, require the same thing: that drain-off water from disturbed areas pass through sedimentation ponds and meet effluent standards before it leaves the permit area. The State will require that detailed plans must be submitted and approved prior to the construction of a structure and that detailed plans must be included with the application for any structure to be built within the first year of the permit term. North Dakota will require the operator to submit with the general plan a schedule for construction of the structures.

Federal regulations at 30 CFR 780.25(a) allow for a general plan to be submitted as long as no structures are built without prior approval and a timetable for construction of proposed structures is included with the submittal.

Also included in the proposed rule change is the incorporation of new OSM provisions of ponds meeting certain Natural Resources Conservation Service (NRCS) criteria. In 1994 (59 FR 53028, Oct. 20, 1994), OSM added additional information requirements for impoundments meeting Class B and C size criteria at 30 CFR 780.25(a). These changes were listed as a required program amendment in OSM's July 17, 1997 letter to the Public Service Commission. The State is requiring operators to submit this additional information for Class B and C impoundments. Mining Safety and Health Administration (MSHA) standards require that plans be prepared and certified by a qualified registered professional engineer. North Dakota states in NDAC 69-05.2-09-16.1(h) that "plans must be certified as meeting the

requirements of this article" and "this article" refers to NDAC 69-05.2 which includes a reference to the MSHA provision on certification by a professional engineer at 30 CFR 77.216-2(17), as well as to a requirement (at 30 CFR 77.216(b)) that "plans . . . be approved by the District Manager (of MSHA) prior to the beginning of any work associated with the construction of the impounding structure."

A new addition to North Dakota rule at NDAC 69-05.2-09-09.2(j) requires information on any direct connections of the impoundment basin to ground water flow in the area. This added provision has no Federal counterpart.

30 CFR 780.25(a)(1)(v) requires that the general plan include a "certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the regulatory authority." The State's counterpart is NDAC 69-05.2-09-09 which states:

d. Include a schedule of the approximate construction dates for each structure and, if appropriate, a timetable to remove each structure.

In addition, as stated above, the referenced 30 CFR 77.216(b) states that plans be approved by the District Manager (of MSHA) prior to the beginning of any work associated with the construction of the impounding structure.

Based on the above discussion, the revised rule requires the submittal of all information that is required by the Federal regulations and is no less effective than the Federal regulations; therefore, we approve it.

5. *NDAC 69-05.2-13-02, Performance standards—General requirements—Annual map.* There is no federal counterpart to this proposed rule. The required submission date for the annual map depicting permit areas and section lines is being moved back one month, from February to March. The reason is that coal operators in North Dakota have many other reports due near the beginning of the calendar year and need the additional month. In addition, the requirement for quarter lines is being eliminated because it is unnecessary and clutters the map. We find that this rule is not inconsistent with the Federal regulations and therefore approve it.

6. *NDAC 69-05.2-13-08, Performance standards—General requirements—Protection of fish, wildlife, and related environmental values.* North Dakota's existing rules include a requirement for the applicant to report to the Public Service Commission by each February 15 with the management plan results

and data derived from the monitoring plan for the calendar year. The State has proposed to change the submittal of the monitoring reports to once every 2 years, in even numbered years. Yearly monitoring must still be carried out in accordance with approved monitoring plans.

The Federal regulations for protection and enhancement plans (30 CFR 780.16(b)) and performance standards (30 CFR 816.97) do not require a periodic report from the operator with management plan results and data derived from the monitoring plan for conducting fish and wildlife monitoring. Accordingly, we are approving the proposed revisions to NDAC 69-05.2-13-08.

7. *NDAC 69-05.2-15-02, Performance standards—Suitable plant growth material—Removal.* Existing North Dakota rule NDAC 69-05.2-15-02(2)(a) requires that

(t)he suitable plant growth materials, commonly referred to as topsoil (first lift suitable plant growth material) and subsoil (second lift suitable plant growth material) as identified by the soil survey required by NDAC 69-05.2-08-10 must be removed and segregated in two separate operations, unless otherwise approved by the Commission. The topsoil removal operation for an area must be completed before subsoil removal begins or before any other disturbances occur in that area. If use of other suitable strata is approved as a supplement to suitable plant growth material, all such materials to be saved must be removed and segregated. Further disturbances which significantly alter an area must not begin until the subsoil or other suitable strata removal operations for that area have been completed and approved by the commission.

North Dakota proposes to add the following statement to the end of rule NDAC 69-05.2-15-02(2)(a),

(h)however, the commission may waive the approval of subsoil removal operations if the operator demonstrates, in a detailed soil removal plan, surplus subsoil is available and that subsoil to be removed has good and relatively uniform characteristics. A request for such a waiver must be included as part of a detailed soil removal plan or permit revision application that contains the necessary information.

The Federal Regulations at 30 CFR 816.22(e) state that for subsoil segregation, "[t]he regulatory authority may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of

§§ 816.111, 816.113, 816.114, and 816.116 of this Chapter."

North Dakota is proposing additional language to subsection 2 of NDAC 69-05.2-15-02 to allow the Commission to waive subsoil removal approvals when the operator demonstrates in a detailed soil removal plan that there is a surplus of stockpiled subsoil and the subsoil characteristics are good and relatively uniform. The Commission's rule has required operators to obtain approvals from the Reclamation Division once subsoil removal has been completed and before additional disturbance of the areas occur. The rule change will allow the Commission to waive such approvals in some instances. The waiving of this approval process will not reduce the amount of subsoil that must be removed and saved by the mine operator. A waiver request would be included as part of an annual soil removal plan or permit revision that provides the necessary information of soil inventories and a discussion of subsoil characteristics.

The Federal regulations allow the regulatory authority to require subsoil segregation. There is no counterpart or discussion in the Federal regulations for the need for regulatory approval following completion of subsoil salvage operations and prior to initiation of additional disturbance. The North Dakota rules would continue to require subsoil salvage. The proposed amendment would only allow the State to waive the requirement that operators obtain approvals from the Reclamation Division once subsoil removal has been completed and before additional disturbance of the areas occur and only if the operator makes the required demonstration.

Based on the above discussion, the proposed revisions to NDAC 69-05.2-15-02(2)(a) are not inconsistent with the Federal regulations and therefore we approve them.

8. *NDAC 69-05.2-15-04, Performance standards—Suitable plant growth material—Redistribution.* Under rule NDAC 69-05.2-15-04(4)(a)(2) North Dakota includes a tabled title "Suitable Plant Growth Material Redistribution Thickness" that identifies certain spoil properties (i.e., texture, sodium absorption ratio, and saturation percentage) and the total redistribution thickness of topsoil plus subsoil that must be used based on the given spoil properties.

North Dakota rule NDAC 69-05.2-15-04(4)(c) states that this paragraph is effective only for those areas disturbed prior to the year 1999.

North Dakota proposes to eliminate saturation percentage as one of the spoil

properties that must be used to determine total topsoil plus subsoil redistribution thickness. North Dakota also proposed to delete NDAC 69-05.2-15-04(4)(c).

The Federal regulations at 30 CFR 816.102(f) require that exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with Section 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

In the May 24, 1983 **Federal Register** promulgating the final rule in the Permanent Regulatory Program for backfilling and grading, two commenters were quoted as advocating retaining the 4-foot-cover requirement for acid- and toxic-forming material. We responded that:

OSM is aware of the many potential problems that attend the proper disposal of toxic materials. However, a national standard for cover thickness is not the solution to these problems. Instead, the regulatory authority should set whatever standards, specific or otherwise, which provide the best solution within the state. The problems of interpretation will be avoided by allowing the state regulatory authorities to set and explain standards designed for local conditions. These standards must be based on the national performance standard requiring successful covering or treatment in accordance with the provisions of 30 CFR 816.102(f).

The change proposes to eliminate saturation percentage as a parameter used for determining the total soil respread thickness when it is based on graded spoil characteristics. This change is supported by North Dakota State University technical report No. 8, (*Relation of Saturation Percentage to Absorption Ratios in North Dakota Soils* by Eugene C. Doll and F. Scott Carter, February 1991) recommended that the saturation percentage parameter be eliminated since it is of little practical value. The other change to this rule would eliminate the sunset clause for allowing total soil respread thicknesses to be based on regraded spoil characteristics. The North Dakota public Service Commission originally adopted provisions to base the total soil respread thickness on graded spoil properties as a result of reclamation research findings from studies conducted on mined lands in North Dakota in the late 1970's and early 1980's. The studies were primarily conducted on small plots and occurred over a relatively short period of time.

Therefore, when the original provision was adopted, the Commission added a sunset clause (subdivision c of subsection 4) to require a future review to determine if the provision should be retained or deleted. While waiting for additional research findings, the Commission extended the sunset clause on two occasions.

The sunset clause is now being eliminated since a 1997 research report by North Dakota State University (*Reducing the Management Variable in Assessing Reclamation Success* by Gary A. Albertson, February, 1997) found that yields on areas where the total soil respread thicknesses were based on the graded spoil properties were as good as reclaimed areas where all available topsoil and subsoil (up to 60 inches) has been respread.

While the Federal regulations require that exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining be adequately covered with nontoxic and noncombustible material, they do not include specific spoil properties requiring burial or the depth of burial required. North Dakota's proposed amendment to NDAC 69-05.2-15-04(4)(a)(2), does not reduce the effectiveness of the existing State rules, and the revised rule is not inconsistent with the Federal requirements at 30 CFR 816.102(f) and therefore we approve it.

There is no federal counterpart to NDAC 69-05.2-15-04(4)(c). The deletion of this rule does not in any way render the State program less effective than the Federal regulations and therefore we approve it.

9. NDAC 69-05.2-16-09, *Performance standards—Hydrologic balance—Sedimentation ponds*. Revisions to this North Dakota rule are being made by the State to: (1) satisfy program amendment changes required in a July 17, 1997 letter from the U.S. Office of Surface Mining. (specifically, the reference to ponds meeting Mining Safety and Health Administration (MSHA) design criteria has been modified); and (2) to add performance standards for impoundments that meet the Class B or C criteria for dams in NRCS Technical Release No. 60 as required by the U.S. Office of Surface Mining in its July 17, 1997 letter).

As proposed, North Dakota's rules at 69-05.2-16-09.17 and 69-05.2-16-09.18 are no less effective than the corresponding Federal regulation at 30 CFR 816.49 dealing with stability, spillway, foundation investigations, and freeboard hydrograph. However, only NDAC 69-05.2-16-09.18, which refers to impoundments meeting class B or C

criteria for dams, specify foundation testing, not .17, which refers to the MSHA criteria at 30 CFR 77.216. NDAC 69-05.2-16-09.17.d, however, states that "The criteria of the mine safety and health administration as published in 30 CFR 77.216 must be met." Mine Safety and Health Administration regulations at 30 CFR 77.216-2(a)(5) state that "The plan \* \* \* shall contain \* \* \* the following information: *A description of the physical engineering properties of the foundation materials on which the structure is or will be constructed*' (underlining added for emphasis). In order to make a description of the physical engineering properties of the foundation materials, foundation testing must be done. North Dakota's rule is therefore the equivalent of the Federal regulations and we approve it.

10. NDAC 69-05.2-19-04, *Performance standards—Waste materials—Disposal of noncoal wastes*. This revision is in response to Program Requirement 934.16(cc) which calls for "placement and storage standards for all types of noncoal hazardous wastes." North Dakota proposed adding wording to its rule dealing with disposal of noncoal wastes generated as part of a mining operation to read as follows:

Placement and storage of all types of noncoal wastes, including any hazardous materials, \* \* \*

The addition of the language makes the North Dakota rule no less effective than the Federal regulations at 30 CFR 816.89 and we approve the revision. We also are removing the required program amendment at 30 CFR 934.16(cc).

11. NDAC 69-05.2-08-15(3)(a). The required program amendment at 30 CFR 934.16(n) requires revision to North Dakota rules for submission of site-specific fish and wildlife resource information when the permit or adjacent areas are likely to include species listed or proposed to be listed by North Dakota under State statutes similar to the Endangered Species Act.

This required program amendment resulted through a misunderstanding of the State's statute at NDCC (North Dakota Century Code) 20.1-02-05, "Powers of the (Game and Fish Department) Director." It was interpreted in the January 9, 1992 **Federal Register** (57 FR 814) to mean that North Dakota had its own Endangered Species Act and if in fact it did, then it needed to refer to it, as the Federal regulations require at 30 CFR 780.16(a)(2).

After an extensive review of both North Dakota's statute and its regulations, it is clear that the State statute is referring to the U.S. Endangered Species Act of 1973. In a

June 19, 1997 letter (administrative record No. ND-BB-12) to ND Reclamation Division Director, James R. Deutsch, Natural Resource Biologist, John Schumacher, who is with the ND Game and Fish Department, stated that "North Dakota does not have legislation governing endangered species," and "We instead defer to the Federal laws and regulations." Therefore the existing State regulations, NDAC (North Dakota Administrative Code) 69-05.2-08-15(3)(a) are no less effective than the Federal regulations at 30 CFR 780.16(a)(2)(i) and we are eliminating the required program amendment at 30 CFR 934.16(n).

#### 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

No individual or State agency name responded to OSM's invitation for comments.

##### 2. Federal Agency Comments

Under 30 CFR 732.17(h)(11)(I), we requested comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program.

The Agricultural Research Service of the U.S. Department of Agriculture responded on October 5, 1998 that it saw no problems with the proposed changes (administrative record No. ND-BB-05).

The U.S. Fish and Wildlife Service responded on October 9, 1998 that the proposed changes are logical and reasonable and that it did not anticipate any significant impacts to fish and wildlife resources as a result of the proposed rules (administrative record No. ND-BB-07).

##### 3. Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are to get a written agreement from the EPA for those provisions of the proposed 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.*).

We requested EPA's written agreement with the proposed amendment (administrative record No. ND-BB-03). On October 8, 1998, EPA gave its written agreement (administrative record No. ND-BB-06).

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

Under 30 CFR 732.17(h)(4), we asked for comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND-BB-03). Neither SHPO nor ACHP responded to our request.

#### V. Director's Decision

Based on the above findings, we approve the proposed amendment as submitted on September 2, 1998.

To implement this decision we are amending the Federal regulations at 30 CFR Part 934, which codify decisions concerning the North Dakota program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage North Dakota to bring its programs into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

#### VI. Procedural Determinations

##### 1. Executive Order 12866

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

##### 2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of 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(c)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### 4. Paperwork Reduction Act

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

##### 5. Regulatory Flexibility Act

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

##### 6. Unfunded Mandates

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

#### List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 13, 1999.

#### Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

#### PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

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

2. Section 934.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

#### § 934.15 Approval of North Dakota regulatory program amendments.

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
9/2/98	11-8-99	NDAC 69-05.2.90 NDAC 69-05.2-01-03 NDAC 69-05.2-05-09 NDAC 69-05.2-09-09 NDAC 69-05.2-13-02 NDAC 69-05.2-13-08 NDAC 69-05.2-15-02 NDAC 69-05.2-15-04 NDAC 69-05.2-16-09 NDAC 69-05.2-19-04

**§ 934.16 [Amended]**

3. Section 934.16 is amended by removing paragraphs (cc) and (n).

[FR Doc. 99-29152 Filed 11-5-99; 8:45 am]

BILLING CODE 4310-05-M

**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**31 CFR Chapter V**

**Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Addition of Persons Blocked pursuant to Executive Order 13088**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Amendment of final rule.

**SUMMARY:** The Treasury Department is adding to appendix A to 31 CFR chapter V the names of persons determined to be state- or socially-owned entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro) and of individuals determined to be acting for or on behalf of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and/or the Government of the Republic of Serbia because of senior positions such individuals hold in those governments. Names of blocked persons appearing in section II of appendix A and blocked vessels appearing in appendix B pursuant to part 585 of 31 CFR chapter V are removed.

**EFFECTIVE DATE:** November 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622-2520.

**SUPPLEMENTARY INFORMATION:**

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**Background**

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"). Appendix B to 31 CFR chapter V contains the names of vessels that are the property of blocked persons or specially designated nationals. Pursuant to Executive Order 13088 of June 9, 1998, "Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting New Investment in the Republic of Serbia in Response to the Situation in Kosovo," (63 FR 32109, 3 CFR, 1998 Comp., p. 191), and the implementing Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations, 31 CFR part 586 (63 FR

54575, October 13, 1998) (the "Regulations"), 650 entities are added to appendix A as entities organized or located in the Federal Republic of Yugoslavia (the "FRY (S&M)") which have been determined to be state- or socially-owned. Seventy-six individuals are also added to appendix A as having been determined to be acting for or on behalf of the Governments of the FRY (S & M) and/or the Republic of Serbia by virtue of the high-level positions they hold in those governments. These governments are defined in §§ 586.306 and 586.308 of the Regulations, respectively, and include "all financial institutions and state-owned and socially-owned entities organized or located" in the territories of the FRY (S&M) and the Republic of Serbia, respectively, as well as "any persons acting or purporting to act for or on behalf of" those governments. (The FRY (S&M) state- or socially-controlled entities and designated individuals are hereinafter referred to as "Blocked Persons.")

Any property subject to the jurisdiction of the United States in which a Blocked Person has an interest is blocked, and U.S. persons are prohibited from engaging in any transaction or in dealing in any property in which a Blocked Person has an interest. The notes to the appendices are amended to revise the identifying abbreviation for Government of the FRY (S&M) Blocked Persons. All entries for entities and individuals listed in section II of appendix A as FRY (S&M) blocked persons, as well as for vessels listed in appendix B pursuant to the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR part 585, are removed. Assets blocked pursuant to part 585 remain blocked, and are not affected by this removal.

Designations of foreign persons blocked pursuant to the relevant statute,