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Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926
Montana Regulatory Program; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[MT–025–FOR]

Montana Regulatory Program

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

ACTION: Final rule; approval of amendment with certain exceptions and an additional requirement.

SUMMARY: We are approving, with certain exceptions and an additional requirement, 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 proposed revisions to, additions of, and deletions of its program rules (ARM 17.24.301–1309). The amendment included changes to: Definitions; permit application requirements; application processing and public participation; application review, findings, and issuance; permit conditions; permit renewal; performance standards; prospecting permits and notices of intent; bonding and insurance; protection of parks and historic sites; lands where mining is prohibited; inspection and enforcement; civil penalties; small operator assistance program (SOAP); restrictions on employee financial interests; blasters license; and revision of permits. Montana revised its program to be consistent with the corresponding Federal regulations and to implement previous statutory changes already approved by OSM.

DATES: *Effective Date:* October 10, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Fleischman, Telephone: 307.261.6550, E-mail 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.

Rules for the Montana program are contained in ARM, Title 17 Chapter 24 entitled ''Reclamation.'' The enabling statutes for the Montana program are contained largely under Title 82 entitled ''Minerals, Oil, and Gas,'' and Chapter 4 entitled ''Reclamation.'' Permitting, performance standards, enforcement, and most program requirements are found in Part 2 of 82–4, Montana Code Annotated (MCA), entitled ''Coal and Uranium Mine Reclamation,'' and the provisions for penalties, fees, and interest are found in Part 10. The procedures for initiating and holding contested case administrative hearings are found at 82–4–206, MCA, and Title 2, Chapter 4, Part 6 of the Montana Administrative Procedure Act, and the provisions providing for judicial review of contested case decisions are set forth in Part 7.

II. Submission of the Proposed Amendment

By letter dated August 29, 2005, Montana sent us an amendment to revise its regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MT–22–1). The proposed revisions are largely in response to changes to the Montana Strip and Underground Mine Reclamation Act that were the result of House Bill (HB) 373, which was enacted in 2003. OSM approved, with several exceptions, the changes to the statute in the February 16, 2005, **Federal Register** (70 FR 8001). Montana's proposed amendment is also in response to the required program amendments at 30 CFR 926.16(e)(1), (k), (l), and (m), and includes changes made at its own initiative, and provides clarification and specificity.

We announced receipt of the proposed amendment in the November 29, 2005, **Federal Register** (70 FR 71428). 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. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 29, 2005. Three parties requested an extension of the comment period. We reopened and extended the public comment period in the February 13, 2006, **Federal Register** (71 FR 7475); the extended comment period ended on February 28, 2006. We received comments from one citizen's group and two individuals.

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 with certain exceptions and an additional requirement as described below.

A. Explanation of Findings

30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR part 700. In 30 CFR 730.5, OSM defines ''consistent with'' and ''in accordance with'' to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

Montana Rules Previously Disapproved by OSM

Included in HB 373 (at Section 15: ''contingent voidness'') was a provision that if any other provision of HB 373 were to be disapproved by OSM, then that disapproved portion would be automatically void. For that reason, in its decision on the statute OSM did not require Montana to delete the provisions that were disapproved. A review of current postings of Montana's statutes shows that the disapproved provisions have been removed. Montana has no authority to propose a regulation under statutory provisions that were voided and removed from the statute because they were disapproved by OSM. However, this proposed amendment contains regulations to implement the previously-disapproved statutory provisions, apparently because the proposed regulations were developed

prior to OSM's decision on the statute. Montana recognizes this problem in its submission and states that the regulations will be removed in the State's next rulemaking.

Nevertheless, OSM must formally disapprove these provisions in this decision. On this basis, OSM is disapproving the phrase ''and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area'' in proposed subparagraph (c) of the definition of ''Approximate original contour'' at 17.24.301(13). OSM is also disapproving the final phrase ''as they relate to uses of land and water within the area affected by mining and the adjacent area'' in the definition of ''Hydrologic balance'' at proposed 17.24.301(54). Because Montana has committed to removing these provisions in its next rulemaking and because the offending provisions have no statutory basis, OSM is not establishing any required program amendments for them.

B. Minor Wording, Editorial, Punctuation, Grammatical and Recodification Changes to Previously Approved Regulations

Montana proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules. In addition to the renumbering and reformatting, Montana also proposed in many instances to revise the statutory and implementing authority references after each section. No substantive changes to the text of these regulations were proposed. Further, Montana proposed numerous revisions to its regulatory program to simplify references to applicable rules, reduce unnecessary, redundant, and duplicative language, reorganize and/or relocate already existing language to a more appropriate place within the regulations, and to provide clarification and specificity to provisions that were previously approved by OSM. Because the proposed revisions to these previously-approved rules are minor in nature and do not change any fundamental requirements or weaken Montana's authority to enforce them, we are approving the changes and find that they are no less effective than the Federal regulations at Title 30 (Mineral Resources), Chapter VII (Office of Surface Mining Reclamation and Enforcement, Department of the Interior), parts 700 through 887.

ARM 17.24.301(37) through (141)(b) recodified; definitions.

ARM 17.24.301(53)(a) and (b); definition of ''Historically used for cropland.''

ARM 17.24.301(68); definition of ''Materially damage the quantity and quality of water.''

ARM 17.24.301(107)(d); definition of ''Ramp road.''

ARM 17.24.303 recodified; Legal, Financial, Compliance, and Related Information.

ARM 17.24.304(1)(f)(i)(C) and (ii)(A), and (i)–(l); recodified; Baseline Information: Environmental Resources.

ARM 17.24.305(1)(j) and (2)(a); Maps.

ARM 17.24.306; Baseline Information: Prime Farmland Investigation.

ARM 17.24.308(1)(b)(vi); recodified; Operations Plan.

ARM 17.24.312(1)(a), (d)(ii) and (2); Fish and Wildlife Plan.

ARM 17.24.313(1)(g)(i) and (ii); recodification; Reclamation Plan.

ARM 17.24.315; Plan for Ponds and Embankments; change ''registered'' to ''licensed professional engineer'' in (1)(a)(i), (b)(i), and (d)(i).

ARM 17.24.321(1)(a), (b) and (d); Transportation Facilities Plan.

ARM 17.24.322(2)(a), (viii) and (ix); Geologic Information and Coal Conservation Plan.

ARM 17.24.405(5)(a) and (b), (7)(a)(i), and (8)(a)(i); Findings and Notice of Decision.

ARM 17.24.412(2) and (3); Extension of Time to Commence Mining.

ARM 17.24.413(1)(d); recodified; Conditions of Permit.

ARM 17.24.501(7); General Backfilling and Grading Requirements.

ARM 17.24.520(3)(k) and (m); Thick Overburden and Disposal of Excess Spoil; change ''registered'' to ''licensed professional engineer'' in (3)(c), (i), (j)(ii) and (iv)(A).

ARM 17.24.523(2); Coal Fires and Coal Conservation.

ARM 17.24.601(8); General Requirements for Road and Railroad Loop construction; change ''registered'' to ''licensed professional engineer.''

ARM 17.24.602(1); Location of Roads and Railroad Loops.

ARM 17.24.605(3)(a)–(f) recodified; Hydrologic Impact of Roads and Railroad Loops.

ARM 17.24.623(1), (5)(f), (6) and (7); recodification; Blasting Schedule.

ARM 17.24.626(1); recodified; Records of Blasting Operations.

ARM 17.24.634(1)(b), (e), (g), (h), (i), (2) and (3); recodification; Reclamation of Drainage Basins; change ''registered'' to ''licensed professional engineer'' in (2).

ARM 17.24.635(6) and (7); General Requirements for Temporary and Permanent Diversion of Overland Flow, Through Flow, Shallow Ground Water Flow, Ephemeral Drainageways, and Intermittent and Perennial Streams; change ''registered'' to ''licensed professional engineer'' in (5).

ARM 17.24.636 recodified; Special Requirements for Temporary Diversions.

ARM 17.24.638(2)(a); Sediment Control Measures.

ARM 17.24.639(1)(c)(ii), (d) and (e), (10), (11), (20)(a),(22), (23), (25), and (28)(a); Sedimentation Ponds and Other Treatment Facilities; change ''registered'' to ''licensed professional engineer'' in (17) and 28(b); and recodification of (24)(b)–(27).

ARM 17.24.645(1), (3) and (6); Ground Water Monitoring.

ARM 17.24.646(1) and (6); Surface Water Monitoring.

ARM 17.24.702(4)(a); Redistribution and Stockpiling of Soil.

ARM 17.24.703(1)(a); Substitution of Other Materials for Soil.

ARM 17.24.711(2) and (3); Establishment of Vegetation.

ARM 17.24.723(1), (2), (3) and (5); Monitoring.

ARM 17.24.724 recodification; Revegetation Success Criteria.

ARM 17.24.725(1); Period of Responsibility.

ARM 17.24.726(3) and (4); recodified; Vegetation Measurements.

ARM 17.24.730; Season of Use.

ARM 17.24.732; Vegetation Requirements for Previously Cropped Areas.

ARM 17.24.733; Measurement Standards for Trees, Shrubs, and Half-Shrubs.

ARM 17.24.751(2)(g), (h), (i), and (j); Protection and Enhancement of Fish, Wildlife, and Related Environmental Values.

ARM 17.24.761(1)–(4); Air Resources Protection.

ARM 17.24.815(2)(e)(i)(C); Prime Farmland Revegetation.

ARM 17.24.824(2) and (4); Alternate Reclamation: Alternate Postmining Land Uses.

ARM 17.24.825(1)(b)–(2); Alternate Reclamation: Alternate Revegetation.

ARM 17.24.832(5)(a); Auger Mining: Specific Performance Standards.

ARM 17.24.901(1)(c)(i)(G); General Application and Review Requirements.

ARM 17.24.924(9); Disposal of Underground Development Waste: General Requirements; change ''registered'' to ''licensed professional engineer in (4)(a), (18)(a) and (d).''

ARM 17.24.927; Disposal of Underground Development Waste: Durable Rock Fills; change ''registered'' to ''licensed professional engineer'' in (1) and (2).

ARM 17.24.930; Placement and Disposal of Coal Processing Waste:

Special Application Requirements; change ''registered'' to ''licensed professional engineer'' in (2)(a)(i).

ARM 17.24.932; Disposal of Coal Processing Waste; change ''registered'' to ''licensed professional engineer'' in (5)(a).

ARM 17.24.1001(1)(a), (b) and (2)(c); Permit Requirement; recodification of (d)–(m), (n) and (o).

ARM 17.24.1002(2)(a)(j); Information and Monthly Reports.

ARM 17.24.1003; Renewal and Transfer of Permits.

ARM 17.24.1017(1)(b)(i); Bond Release Procedures for Drilling Operations.

ARM 17.24.1018(1)(a), (b), (5)(a), (6)(a), and (9); Notice of Intent to Prospect.

ARM 17.24.1104(2); Bonding: Adjustment of Amount of Bond.

ARM 17.24.1106(1)(a) and (b); recodified; Bonding: Terms and Conditions of Bond.

ARM 17.24.1109 (1) and (5); recodified; Bonding: Letters of Credit.

ARM 17.24.1116(6)(b)(ii), (c)(iv), (d)(i), (vi) and (7); Bonding: Criteria and Schedule for Release of Bond.

ARM 17.24.1129(2)(e) and (3); Annual Report.

ARM 17.24.1131(1); recodified; Protection of Parks, Historic Sites, and Other Lands.

ARM 17.24.1206(1), (4), (5)(a) and (d); Notices, Orders of Abatement and Cessation Orders: Issuance and Service.

ARM 17.24.1211(2); Procedure for Assessment and Waiver of Civil Penalties.

ARM 17.24.1212(1)(a)–(d), (2) and (4); Point System for Civil Penalties and Waivers.

ARM 17.24.1219(2)(a) and (4); Individual Civil Penalties: Procedure for Assessment.

ARM 17.24.1225(2)(a)(i), (b), (d), (f)–(j) and (3); Small Operator Assistance Program: Data Requirements.

ARM 17.24.1226(2)(a)(vi) and (vii); Small Operator Assistance Program: Qualification of Laboratories, Consultants, and Contractors.

ARM 17.24.1250(1); Restrictions on Employee Financial Interests: Contents of Statement.

ARM 17.24.1255(1); Restrictions on Employee Financial Interests: Multiple Interest Advisory Boards.

ARM 17.24.1263(1)(a) and (3); Suspension or Revocation of Blaster Certification.

C. Revisions to Montana's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Montana proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations and/or SMCRA. Therefore we are approving them.

ARM 17.24.301(26); definition of ''Community or institutional building'' [30 CFR 816.61(d)(1)(i), 816.67(b)(1)(i) and 816.68(d)].

ARM 17.24.301(36); definition of ''Dwelling'' [30 CFR 816.61(d)(1)(i), 816.67(b)(1)(i) and 816.68(d)].

ARM 17.24.301(59); definition of ''Incidental boundary revision'' [30 CFR 774.13(d) and SMCRA Section 511(3)].

ARM 17.24.301(107)(b); definition of ''Haul road'' [30 CFR 701.5 and 816/817.150(a)(2)(ii)].

ARM 17.24.302; Format, Data Collection, and Supplemental Information [30 CFR 777.11(a) and 777.13].

ARM 17.24.303(1)(w), (x), and (y); Legal, Financial, Compliance, and Related Information [30 CFR 778.21 and 777.14(b)].

ARM 17.24.305(2)(b)(i); Maps [30 CFR 779.25(b), 780.14(c) and 783.25(b)].

ARM 17.24.313(1)(b), (d)(ii) and (iv), (g), and (h); Reclamation Plan [30 CFR 780.18(b)(1), (3), (4) and (5)].

ARM 17.24.321(1) and (3); Transportation Facilities Plan [30 CFR 780.37(a)(5) and 784.24(a)(5)].

ARM 17.24.322(2)(a)(x) and (4); Geologic Information and Coal Conservation Plan [30 CFR 780.18(b)(6) and 816.59].

ARM 17.24.416(1)(b); Permit Renewal [30 CFR 774.15(b)(2)(iv)].

ARM 17.24.427(1)(a), (c) and (2); Change of Contractor [30 CFR 774.17(a),(b), and (d)].

ARM 17.24.501(4)(d); General Backfilling and Grading Requirements [30 CFR 816.102(a)(2)].

ARM 17.24.501(6)(d); General Backfilling and Grading Requirements [30 CFR 816.102(a)].

ARM 17.24.603(4); Road and Railroad Loop Embankments [30 CFR 816.151(b)].

ARM 17.24.605(8); Hydrologic Impact of Roads and Railroad Loops [30 CFR 816.151(d)(6)].

ARM 17.24.609(1); Other Support Facilities [30 CFR 816.181(b)].

ARM 17.24.623(2); Blasting Schedule [30 CFR 816.64(b)(2)].

ARM 17.24.623(5)(b); Blasting Schedule [30 CFR 816.64(c)(2)].

ARM 17.24.624(4); Surface Blasting Requirements [30 CFR 816.66(b)].

ARM 17.24.626(1)(j); Records of Blasting Operations [30 CFR 816.68(j)].

ARM 17.24.636(2) and (3); Special Requirements for Temporary Diversions [30 CFR 816.43(a)(2)(i) and (iii)].

ARM 17.24.639(2), (3) and (7); Sedimentation Ponds and Other Treatment Facilities; [30 CFR 816.46(c)(1) and (2)].

ARM 17.24.642(1)–(7); Permanent Impoundments and Flood Control Impoundments [30 CFR 816.49(a)(9) and (b)].

ARM 17.24.646(4); Surface Water Monitoring [30 CFR 816.42].

ARM 17.24.701(4); Removal of Soil [30 CFR 816.22(a)(3)].

ARM 17.24.702(4)(b) and (6); Redistribution and Stockpiling of Soil; [30 CFR 816.22(d)(1)(i) and (2)].

ARM 17.24.714(1); Soil Stabilizing Practices [30 CFR 816.114].

ARM 17.24.716(1), (3), (4), and (5); Method of Revegetation; [30 CFR 816.111(a) and (b) and 780.18(b)(5)].

ARM 17.24.717(1); Planting of Trees and Shrubs [30 CFR 816.111(b) and 816.116(a) and (b)(3)(ii) and (iii)].

ARM 17.24.718(3); Soil Amendments, Management Techniques, and Land Use Practices [30 CFR 816.116(c)(4)].

ARM 17.24.724(1)–(3); Revegetation Success Criteria [30 CFR 816.116(a)(1) and (b)].

ARM 17.24.726(2) and (3); Vegetation Measurements [30 CFR 816.116(a)(2) and 816.116(c)(3)(i)].

ARM 17.24.751(1) and (2)(a), (c) and (f); Protection and Enhancement of Fish, Wildlife, and Related Environmental Values [30 CFR 816.97(b), (c), (e)(1) and (3), (f) and the MOU between OSM and the USFWS].

ARM 17.24.762(1)(a)–(d); Postmining Land Use [30 CFR 816/817.133(b) and 780.23(a)(1)].

ARM 17.24.832(4) and (5)(b) and (c); Auger Mining: Specific Performance Standards [30 CFR 819.19(a) and 819.15(b)(2)].

ARM 17.24.1001; Permit Requirement; (2)(d) [30 CFR 772.12(b)(14)].

ARM 17.24.1104(1) and (3); Bonding: Adjustment of Amount of Bond [30 CFR 800.15].

ARM 17.24.1108(1), (2) and (4); Bonding: Certificates of Deposit [30 CFR 800.21(a)].

ARM 17.24.1125(2); Liability Insurance [30 CFR 800.60(b)].

ARM 17.24.1132(1)(a); Definition of ''valid existing rights;'' [incorporates by reference the Federal definition at 30 CFR 761.5].

ARM 17.24.1133; Areas Upon Which Coal Mining is Prohibited: Procedures for Determination; (2)(a), (b) [30 CFR 761.11 and 761.12] and (3) [incorporates by reference the Federal requirements and criteria for submission and processing of requests for valid existing rights determinations at 30 CFR 761.16].

ARM 17.24.1201(1)–(4); Frequency and Methods of Inspections [30 CFR 840.11(a), (b), (d)(1), and (e)(1) and (2)].

ARM 17.24.1202(1); Consequences of Inspection and Compliance Reviews [30 CFR 840.11(e)(3)].

ARM 17.24.1301; Modification of Existing Permits: Issuance of Revisions and Permits [774.10(a)(1) and (b)].

D. Revisions Adopting or Deleting Language Consistent With the Revisions to the Montana Statute Approved by OSM

Montana proposes several revisions to its rules that are consistent with and reflect enactment of the provisions in HB 373 that were approved in our decision published in the February 16, 2005, **Federal Register** (70 FR 8001). We are approving these previously-approved changes. Montana also proposes to eliminate language and citations that are no longer necessary due to the approval of those statutory changes in the February 16, 2005, **Federal Register**. We are also approving these ancillary changes.

ARM 17.24.301(6); definition of ''Adjacent area.''

ARM 17.24.301(11); definition of ''Alternative postmining land use.''

ARM 17.24.301(13); the introductory text, subparagraphs (a), (b), and (d) of the definition of ''Approximate original contour.''

ARM 17.24.301(38); definition of ''Ephemeral drainageway.''

ARM 17.24.301(50); definition of ''Higher or better uses.''

ARM 17.24.301(54); definition of ''Hydrologic balance.''

ARM 17.24.301(64); definition of ''Land use.''

ARM 17.24.301(64)(b); deleting the definition of ''Special use pasture'' and substituting with the definition of ''Pastureland.''

ARM 17.24.301(64)(c); definition of ''Grazing land.''

ARM 17.24.301(64)(d); deleting the definition of ''Commercial forest land and substituting with the definition of ''Forestry.''

ARM 17.24.301(64)(g); definition of ''Recreation.''

ARM 17.24.301(64)(h); definition of ''Fish and wildlife habitat.''

ARM 17.24.301(67); definition of ''Material damage.''

ARM 17.24.301(90); definition of ''Prime Farmland.''

ARM 17.24.301(103); definition of ''Reference area.''

ARM 17.24.301(143); definition of ''Wildlife habitat enhancement feature.''

ARM 17.24.312(1)(b); Fish and Wildlife Plan.

ARM 17.24.313(1)(a); Reclamation Plan.

ARM 17.24.324(1)(e); Prime Farmlands: Special Application Requirements; deletion of cross-references resulting from statutory changes.

ARM 17.24.401(3)(f) and (5)(a)(iv); Filing of Application and Notice.

ARM 17.24.405(1) and (2), (6)(j), and deletion of (7); Findings and Notice of Decision.

ARM 17.24.501(4)(a); General Backfilling and Grading Requirements.

ARM 17.24.634(c); Reclamation of Drainage Basins.

ARM 17.24.711(1)(a)(2) and (3), and (1)(b); Establishment of Vegetation.

ARM 17.24.726; Vegetation Measurements; deletion of (3), (5) and (7).

ARM 17.24.728; Composition of Vegetation.

ARM 17.24.751(2)(e); Protection and Enhancement of Fish, Wildlife, and Related Environmental Values.

ARM 17.24.762(1), (2), and (3); Postmining Land Use.

ARM 17.24.764; Cropland Reclamation.

ARM 17.24.815(1)(a)(i), (ii) and (b); Prime Farmland Revegetation.

ARM 17.24.821; Alternative Postmining Land Uses: Submission of Plan.

ARM 17.24.823(1)(a); Alternative Postmining Land Uses: Approval of Plan.

ARM 17.24.824(1), (3), and (5); Alternate Reclamation: Alternate Postmining Land Uses.

ARM 17.24.1116(6), (c)(v) and (d)(vi); Bonding: Criteria and Schedule for Release of Bond.

E. Revisions to Montana's Rules With No Corresponding Federal Statute or Regulation

Montana proposed several revisions to its regulatory program for which there is no Federal counterpart provision.

1. ARM 17.24.301(46); Definition of ''Good Ecological Integrity.'' Montana proposes to add a new definition for ''Good ecological integrity'' as follows:

> ''Good ecological integrity'' means that the complex of community of organisms and its environment functioning as an ecological unit possesses components and processes in good working order. Pastureland and cropland managed in accordance with county or local conservation district or state or federal best management practices (resource management strategies, such as normal husbandry practices, used to manage or protect a resource and promote ecological and economic sustainability) generally reflect good ecological integrity with regard to such land uses.

Montana maintains that this definition is needed to adequately and appropriately describe the desired condition for reference and reclaimed areas. Specifically, Montana states that following an extensive literature review, it was determined that this term is regularly accepted, used and recommended by a variety of professional ecologists. Montana further notes that the term emphasizes the combination of ecological, social and economic factors at different temporal and spatial scales, and that the desired result is the maintenance of a diversity of life forms, ecological processes and human cultures. Montana goes on to explain that ''Good'' is a commonly and conventionally accepted minimum standard insisted on by competent land managers and by land management agencies as a condition and/or goal necessary to sustain the utility and economic value of vegetation, land uses and ecosystems. Lastly, Montana states that the term ''ecological integrity'' is consistent with vegetation, land and resource valuation systems being commonly used by federal and state land management agencies, academia, consultants and private land managers. The rationale Montana provided for justifying the addition of this definition is reasonable, and the lack of a Federal counterpart definition does not render this proposed rule less effective than the Federal regulations. Therefore, we approve it.

2. ARM 17.24.323; Grazing Plan. Montana proposes to delete this rule and explains that grazing is discretionary management to be used by a mine operator to achieve the approved revegetation and postmining land use results, and that the State Board has determined that implementation and management of grazing within a mine permit area should be the responsibility of the operator. If the operator fails to appropriately use grazing, the desired/approved revegetative/land use results will probably not be obtained and phase III bond release will not be realized. Lastly, Montana notes that it has the power to require appropriate practices or to pursue enforcement actions if the operator violates any rules regarding revegetation or land use.

The Federal grazing rules, previously located at 30 CFR 816.115, required livestock grazing for the last two years of the responsibility period when the approved postmining land use is range or pasture land. This requirement was intended to assure that the vegetation would support about the same number of livestock that would be supported had the area not been mined. OSM suspended previous 30 CFR 816.115 on August 4, 1980 (45 FR 51549), in response to a U.S. District Court ruling that section 515(b)(19) of the Act does not require lands with a postmining use

of pasture or grazing to be actually subjected to grazing activities. *In re: Permanent Surface Mining Regulation Litigation*, 617 F.2d 807 (1980). On September 2, 1983 (48 FR 40140) OSM removed the previously suspended regulation at 30 CFR 816.115, thereby eliminating any reference to required grazing from the Federal regulations.

For these reasons, Montana's deletion of the grazing plan rule and its rationale for doing so is acceptable and does not render Montana's rules less effective than SMCRA and the Federal regulations. Therefore, we are approving the deletion. For these same reasons, we are approving Montana's proposed deletion of its requirements for livestock grazing at ARM 17.24.719.

3. ARM 17.24.413; Conditions of Permit. Montana proposes to add an additional condition to all permits at subparagraph (1)(f), to read as follows:

> A permittee shall immediately notify the department whenever a creditor of the permittee has attached or obtained a judgment against the permittee's equipment or materials in the permit area or on the collateral pledged to the department.

The Federal regulations at 30 CFR 800.16(e) require that performance bonds provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violation which would result in the suspension or revocation of the surety or the bank charter or license to do business. Montana's proposed rule provides guidance beyond that contained in the Federal regulations to the extent that it requires the permittee to personally and immediately notify the Department of Environmental Quality (Department) of its financial inability to perform reclamation operations and supply it with relevant information to that effect. Accordingly, the proposed rule is no less effective than the Federal regulations and we approve it.

4. ARM 17.24.522; Permanent Cessation of Operations. Montana proposes to delete the first two sentences of paragraph (3), which provides for completion of backfilling and grading within 90 days after the Department determines the operation is completed, and that final pit reclamation must be as close to the coal loading operation as technical factors allow. Montana's explanatory note states that the proposed deletion is necessary because the provision conflicts with ARM 17.24.501(6)(b), which requires backfilling and grading to be completed within two years after coal removal, and the 90-day requirement is unrealistic for large coal mining operations. We agree. The Federal time and distance requirements for backfilling and grading at 30 CFR 816.101 were suspended indefinitely on August 31, 1992 (57 FR 33875, July 31, 1992). Moreover, the permanent cessation of operations regulations at 30 CFR 816.132(a) requires persons who permanently cease surface mining operations to close or backfill or otherwise permanently reclaim all affected areas in accordance with the permit approved by the regulatory authority. In other words, the regulatory authority has discretion in determining time and distance requirements for backfilling and grading operations. The provision which Montana proposed for deletion falls within the State's discretion to specify, according to the Federal regulations. There is no exact Federal equivalent. Therefore, we find the proposed revision is not inconsistent with the applicable Federal provisions and we approve it.

5. ARM 17.24.633; Water Quality Performance Standards. Montana proposes to revise paragraph (2) of this rule to require a demonstration that drainage basins have been stabilized consistent with the approved postmining land use. Montana explains that the rule change modifies the evaluation of drainage basin stability to reflect enactment of HB 373 by the 2003 Legislature. Under HB 373, there is a greater opportunity for having a postmining land use that is different from the premining land use and, thus, drainage basin stability must be evaluated in that context. We agree. In the February 16, 2005, **Federal Register** (70 FR 8001, 8004), we approved subparagraph (c) of Montana's statutory definition of ''Approximate Original Contour'' at 82–4–203(4) which stated that ''postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected.'' In approving this language, we noted that it provides guidance beyond that contained in the Federal definition of approximate original contour. This same rational applies here. Further, as we note in Finding III.F.8., OSM has previously granted regulatory authorities the flexibility to develop stabilization measures consistent with local terrain, climate, soils, and other conditions existing within the State with respect to exposed surface areas, including drainage basins (48 FR 1160, January 10, 1983). For these reasons, we find that Montana's proposed rule change is no less stringent than SMCRA and we are approving it.

6. ARM 17.24.711; Establishment of Vegetation. Montana proposes to revise its rules by adding new subparagraph (1)(a) that implements statutory language previously approved by OSM in our decision published in the February 16, 2005, **Federal Register** (70 FR 8001, 8008). With one exception, Montana's proposed revision provides revegetation requirements equivalent to SMCRA 515(b)(19) and 30 CFR 816/817.111(a). The exception, as was discussed in the February 16, 2005 **Federal Register** Notice (Finding C.14.a) addressing the identical statutory language, is that Montana's proposal at proposed subparagraph (1)(a) would not require operators to plant water areas, surface areas of roads, ''and other constructed features.'' The Federal requirements of SMCRA 515(b)(19), as implemented at 30 CFR 816/817.111(a), provide only the first two exemptions. The third exemption provided by Montana, ''and other constructed features,'' is undefined. All of reclamation could be considered ''constructed,'' so this exemption could broadly be construed to apply to the whole affected area. We believe that Montana intended here that this exemption would be applied to parking lots, material storage yards, etc., that are limited in size and slope, and are stabilized against erosion by paving or gravel. Therefore, consistent with our decision in the February 16, 2005, **Federal Register**, we are approving ARM 17.24.711(1)(a) with the proviso that the exemption for ''and other constructed features approved as part of the postmining land use'' not be applied until (1) Montana promulgates rules that provide for a clear definition of ''other constructed features'' and provide for limits on size and slope and stabilization against erosion, and other factors that may affect environmental stability, and (2) those rules are approved by OSM.

Montana also amends its rules at ARM 17.24.711(1)(a)(1), subparagraph (d), by proposing a limitation that the revegetation need only be capable of stabilizing soil erosion to the extent appropriate for the postmining land use. Consistent with our decision in the February 16, 2005, **Federal Register** notice, we are approving Montana's proposed amendment with the understanding that revegetation success standards must be representative of

unmined lands under that proposed postmining land use in the area. In other words, the erosion control achieved by revegetation that meets the success standards will be equivalent to the erosion protection of unmined lands being used for the same purpose within that general vicinity. This is particularly true when an alternative ''higher or better,'' land use is being established during reclamation.

7. ARM 17.24.1109; Bonding: Letters of Credit. Montana proposes to revise subparagraph (1)(d), and add new subparagraphs (1)(e), (f), and (g) to read as follows:

(d) The letter must not be for an amount in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant for the most recent annual reporting period.

(e) Using the balance sheet referenced in (1)(d) and a certified income and revenue sheet, the bank must meet the three following criteria:

(i) The bank must be earning at least a 1% return on total assets (net income/total assets = 0.01 or more);

(ii) The bank must be earning at least a 10% return on equity (net income/total stockholders equity = 0.1 or more); and

(iii) Capital or stockholders' equity must be at least 5.5% of total assets (total stockholders equity [shareholders equity + capital surplus + retained earnings])/total assets = 0.055 or more).

(f) Under a general financial health category, from either Sheshunoff Information Services, Moody's (Mergent Ratings Service) or Standard and Poor's, the bank must have a b+ or better rating for the current and previous two quarters.

(g) The bank's qualifications must be reviewed yearly prior to the time the letter of credit is renewed.

There are no similar provisions in SMCRA or the Federal regulations. Montana states that the proposed amendment to (1)(d) requires the balance sheet to be for the most recent annual reporting period to assure that the Department bases its evaluation of the financial condition of the bank on current financial information. Montana also notes that the proposed addition of (1)(e) and (f) provides prudent standards for the Department to follow when evaluating whether to accept a letter of credit from an issuing bank, and goes on to explain that these financial tests were developed in consultation with the Banking and Financial Division of the Montana Department of Commerce and are used by the Office of Surface Mining in accepting letters of credit. Lastly, Montana states that the proposed addition of (1)(g) is necessary because a bank's financial health may change over time.

We agree with Montana that the proposed revisions requiring an up-to-date balance sheet, applying additional financial tests and criteria regarding the acceptance of letters of credit, and performing annual evaluations of a bank's qualifications will allow for a stronger analysis of a lending institution's current financial condition and will provide further assurance of a bank's financial strength. Montana's proposed amendment provides guidance beyond that contained in the Federal regulations. We find that the underlying rationale Montana provided for justifying the addition of these provisions is reasonable and the lack of exact Federal counterpart requirements do not render them less effective than the Federal regulations. Therefore, we approve them.

F. Revisions to Montana's Rules That Are Not the Same as the Corresponding Provisions of SMCRA and/or the Federal Regulations

1. ARM 17.24.301(33); Definition of ''Diversion.'' Montana proposes to revise the definition of ''Diversion'' to read as follows:

''Diversion'' means a channel, embankment, or other manmade structure constructed to divert undisturbed runoff around an area of disturbance and back to an undisturbed channel.

The Federal definition at 30 CFR 701.5 states that ''*Diversion* means a channel, embankment, or other manmade structure constructed to divert water from one area to another.''

Montana's proposed definition applies only to structures designed to divert water around the operation. The Federal definition includes all structures constructed to divert water, but its application in 30 CFR 816.43 involves only structures designed to divert water around an operation. Therefore Montana's proposed change is consistent with and no less effective than the Federal definition and we are approving it.

2. ARM 17.24.308; Operations Plan. Montana proposes to revise subparagraph (1)(b) by adding the following new subsection to the proposed operations for which compliance must be demonstrated:

(vii) Facilities or sites and associated access routes for environmental monitoring and data gathering activities [or] for the gathering of subsurface data by trenching, drilling, geophysical or other techniques to determine the nature, depth, and thickness of all known strata, overburden, and coal seams.

In its explanatory note, Montana states that the proposed addition of (b)(vii) specifies additional information that needs to be included in a plan of operations when prospecting activities and facilities are transferred to a strip or underground mining permit pursuant to ARM 17.24.1001(7). Further, Montana notes that the word ''or'' was mistakenly left out of this provision as printed in the final rule notice by the Secretary of State, and will need to be added in the next rulemaking. Montana's proposed addition of this rule provides needed specificity with respect to requiring additional facilities information, is more stringent than the Federal requirements, and therefore is not inconsistent with the Federal rules at 30 CFR 780.11(b). For these reasons, we approve it.

3. ARM 17.24.313; Reclamation Plan. Montana proposes to add a new provision at (1)(d)(v) requiring that the plan for backfilling demonstrate that the proposed postmining topography can be achieved. Montana further proposes to add provisions at (1)(e) and (f), respectively, that require each reclamation plan to contain a description of postmining drainage basin reclamation that ensures protection of the hydrologic balance, achievement of postmining land use performance standards, and prevention of material damage to the hydrologic balance in adjacent areas, as well as drainage channel designs appropriate for preventing material damage to the hydrologic balance in the adjacent area and to meet the performance standards for the reclamation of drainage basins at ARM 17.24.634.

Montana's proposed rule at ARM 17.24.313(1)(d)(v) is added to restate more clearly the requirement that a reclamation plan contain a demonstration that the postmining topography can be achieved. The proposed revision simply provides additional guidance and specificity regarding information to be supplied by an operator to gauge the potential for success with respect to achieving postmining topography. The proposed rules at subparagraphs (e) and (f) essentially replace and are more comprehensive than the design requirements for drainage channels currently located at ARM 17.24.634(2), which is proposed for deletion. These additional requirements are no less effective than the Federal hydrologic reclamation plan requirements set forth at 30 CFR 780.21(h). For the reasons discussed above, we are approving Montana's proposed rules.

4. ARM 17.24.313(b) (second sentence), 17.24.515(2), 17.24.821, 17.24.823, 17.24.824, and 17.24.825; Revisions to ''Alternate Reclamation'' Rules. In a previous amendment, Montana proposed to delete its statutory provisions at MCA 82–4–232(7) and (8) addressing ''alternate reclamation'' and

replace them with new paragraphs providing requirements for ''land capability and alternative land uses.'' We approved Montana's proposed statutory changes in the February 16, 2005, **Federal Register** (70 FR 8001, 8007, Finding C.12), and noted that several rules within the Montana program were statutorily authorized only by the deleted paragraphs. We further stated that since the statutory authorization for these rules would no longer exist, Montana would have to remove these rules when promulgating new rules to implement the statutory changes.

Consistent with our February 16, 2005 decision, Montana now proposes to revise its implementing rules for ''alternate reclamation'' at ARM 17.24.313(b) (second sentence), 17.24.515(2), 17.24.821, 17.24.823, 17.24.824, and 17.24.825, respectively, by deleting paragraphs addressing ''alternatives'' to backfilling, grading, highwall elimination, topsoiling, and planting of a permanent diverse cover. Because the statutory authorization for these rules and paragraphs referencing ''alternate reclamation'' no longer exists, we approve their deletion. In their place, Montana proposes to substitute new criteria at ARM 17.24.821 and 17.24.823 for ''alternative postmining land uses'' as enacted in HB 373 and approved by us in the February 16, 2005, **Federal Register** as being consistent with and no less effective than SMCRA 515(b)(2) and the Federal regulations at 30 CFR 816/817.133. Thus, Montana's proposed revisions to its rules implementing the previously approved statutory alternative postmining land use criteria are appropriate and we approve them. Montana also proposes to delete its ''alternate reclamation'' rule at ARM 17.24.826 addressing ''period of responsibility for alternative revegetation'' due to changes enacted in HB 373. For the same reasons explained above, we approve it.

5. ARM 17.24.404; Review of Application. Montana proposes to delete paragraph (9) of this rule because the right to appeal a permitting decision is already covered in Montana's statutes at 82–4–231(9), MCA. Paragraph (10) is proposed for deletion because Montana applies the same standards to all applications and 82–4–231(11), MCA, requires operations to be conducted in such a manner so as to protect property adjacent to the permit area. Existing ARM 17.24.404(9) grants the right to an administrative hearing only to applicants who are subject to a denial of a permit application or major revision under 82–4–227(11), MCA. 82–4–231(9), MCA, is much broader in the sense that it entitles any person with an interest that is or may adversely be affected by the Department's permit decision to a contested case hearing governed by the Montana Administrative Procedures Act and before the Board of Environmental Review. Thus, Montana's proposed deletion of ARM 17.24.404(9), in reliance on 82–4–231(9), MCA, is no less stringent than SMCRA 514(c) and we approve it. Existing ARM 17.24.404 (10) is duplicative of and less specific than the standards set forth in 82–4–231(11), MCA, regarding the protection of areas outside the permit area. Similarly, Montana's proposed deletion of 17.24.404(10), in reliance on 82–4–231(11), MCA, is no less stringent than SMCRA 515(b)(21) and we also approve it.

6. ARM 17.24.515; Highwall Reduction. Montana proposes to revise paragraph (1) to require that highwalls must be eliminated and the reduced highwall slope must be no greater than whatever slope is necessary to achieve a minimum long-term static safety factor of 1.3. Montana also proposes to revise paragraph (2) by deleting existing subparagraph (2)(c), which provides that highwall reduction alternatives must comply with ARM 17.24.313, 17.24.821–17.21.824 (see Finding No. III.F4). Montana deleted these cross-references because the rules have either been eliminated or are no longer relevant due to statutory modifications that we approved in the February 16, 2005, **Federal Register** (70 FR 8001, 8007). In their place, Montana now proposes additional new language to read as follows:

> (2) Highwall reduction alternatives may be permitted only to replace bluff features that existed before mining and where the department determines that:
>
> (a) Postmining bluffs are compatible with the proposed postmining land use;
>
> (b) Postmining bluffs are stable, achieving a minimum long-term static safety factor of 1.3;
>
> (c) Similar geometry and function exists between pre- and postmining bluffs;
>
> (d) The horizontal linear extent of postmining bluffs does not exceed that of the premining condition; and
>
> (e) Highwalls will be backfilled to the extent that the uppermost mineable coal seam is buried in accordance with ARM 17.24.505(1).

Previously, OSM approved similar provisions for the New Mexico and Utah State regulatory programs (45 FR 86464, December 31, 1980 and 60 FR 28040, May 30, 1995). In the New Mexico and Utah approvals, OSM required the State programs to contain the following provisions: (1) Requirement for regulatory authority approval; (2) restrictions on allowable height and length of the retained highwall in relation to natural escarpments and cliffs; (3) requirement that a retained highwall replace a preexisting cliff or similar natural premining feature that was removed by the mining operation; and (4) requirement for the permit applicant to demonstrate that the retained highwall feature is stable and will achieve a long-term static safety factor of 1.3 and will not pose a hazard to the public health and safety. With these restrictions, OSM found provisions for limited highwall retention in the New Mexico and Utah regulatory programs to be in accordance with the requirements of SMCRA 515(b)(3) and consistent with the Federal regulations at 30 CFR 816.102(a)(2) to backfill and grade to achieve the approximate original contour (AOC). AOC in these requirements includes the provision to eliminate all highwalls. The establishment of the above restrictions however, ensures that for a limited stretch of highwall to be retained, it must replace a similar feature that exists in the original contours thereby meeting the requirement to restore AOC. In the approval of the provision for New Mexico, OSM found that if an operator can demonstrate to the satisfaction of the Director (State) that all of the above criteria can be met, then the limited highwall retention is available. Such retention in these instances actually reflects the intent of ''approximate original contour'' since these features were part of the natural pre-mined landscape. These same criteria were recently applied in approving a Wyoming proposal to allow for the retention of limited stretches of highwall to replace escarpments and cliffs that exist naturally in the area of the mine prior to the mine operations (71 FR 50852, August 28, 2006).

Similarly, Montana's provisions for highwall retention to replace existing natural features are contained in ARM 17.24.515. As we required in the New Mexico, Utah, and Wyoming programs, Montana requires the features to be approved by the regulatory authority. In addition, Montana's provisions ensure stability and a factor of safety of 1.3; contain restrictions on allowable length in relation to premine features; and replacement of natural features that were mined out or are planned to be mined out under the current mine plan. Montana's proposed revisions do not contain specific language regarding habitat replacement, public health and safety, height restrictions, or define the term ''bluff.'' Nevertheless, we interpret

the meaning of the phrase ''postmining land use'' in subparagraph (2)(a) to include plant and wildlife habitat, and the language in subparagraph (2)(b) to represent that postmining bluffs will not pose a threat to public health and safety. We also interpret the meaning of the phrase ''similar geometry'' found in subparagraph (2)(c) of Montana's provisions to include the restriction that the vertical height of bluffs not exceed the premine height. Lastly, we interpret the term ''bluff'' to mean a vertical or near vertical feature in the landscape. Based on these interpretations and the discussion above, we find Montana's provisions for limited highwall retention to be in accordance with SMCRA 515(b)(3) and consistent with 30 CFR 816.102(a)(2).

7. ARM 17.24.624; Surface Blasting Requirements. Montana proposes to revise its rules at subparagraphs (6)(a), (7)(a), and paragraphs (11) and (14) to simplify and provide consistency to the description of structures that are subject to blasting restrictions as they pertain to airblast, proximity of blasting operations, peak particle velocity, and the maximum weight of explosives to be detonated. These structures include ''any dwelling, or public, commercial, community or institutional building.''

Montana defines ''Community or institutional building'' in its rules at ARM 17.24.301(26) to mean ''any structure, other than a public building or a dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services including, but not limited to, water supply, power generation or sewage treatment.'' The Federal regulations at 30 CFR 816.61(d)(1)(i), 816.67(b)(1)(i) and 816.68(d) consistently identify the structures subject to blasting restrictions as ''dwelling, public building, school, church, community or institutional building.'' Montana's proposed revisions, when read in the context of its definition of ''community or institutional building,'' are consistent with and no less effective than the Federal regulations. Therefore, we are approving Montana's proposed rule changes. For the same reasons discussed above, we are approving Montana's proposed revision to its rules at ARM 17.24.626(1)(d) regarding Records of Blasting Operations.

8. ARM 17.24.634; Reclamation of Drainage Basins. Montana proposes numerous revisions to reorganize ARM 17.24.634 so that all of the substantive requirements for reclaiming drainage basins, including valleys, channels and floodplains, are listed after introductory paragraph (1). Proposed revised paragraph (1) reads as follows:

(1) Reclaimed drainage basins, including valleys, channels, and floodplains must be constructed to:

(a) Comply with the postmining topography map required by ARM 17.24.313(1)(d)(iv) and approved by the department;

(b) Approximate original contour;

(c) An appropriate geomorphic habit or characteristic pattern consistent with 82–4–231(10)(k), MCA;

(d) [Remains the same]

(e) Provide separation of flow between adjacent drainages and safely pass the runoff from a six-hour precipitation event with a 100-year recurrence interval, or larger event as specified by the department;

(f) Provide for the long-term relative stability of the landscape. The term ''relative'' refers to a condition comparable to an unmined landscape with similar climate, topography, vegetation and land use;

(g) Provide an average channel gradient that exhibits a concave longitudinal profile;

(h) Establish or restore a diversity of habitats that are consistent with the approved postmining land use, and restore, enhance where practicable, or maintain natural riparian vegetation as necessary to comply with ARM subchapter 7; and

(i) Exhibit dimensions and characteristics that will blend with the undisturbed drainage system above and below the area to be reclaimed and that will accommodate the approved revegetation and postmining land use requirements.

We note that reclaimed drainages meet the definition of ''diversion'' at ARM 17.24.301(33), and in particular are permanent diversions. Montana's proposed rule is consistent with 30 CFR 816.43(a)(3) requiring that a permanent diversion or stream channel that is reclaimed after removal of a temporary diversion be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel, as well as the regulations at 30 CFR 780.21(h), 816.41(a) and (d), and 816/817.43(b) requiring that diversions protect the hydrologic balance, water quality, and channel volume. The proposed rule also includes approximate original contour considerations consistent with those set forth in 30 CFR 816.102(a), and provides standards for the stabilization of reclaimed surface areas to effectively control erosion in accordance with 30 CFR 816.95(a). While there is no exact Federal counterpart to Montana's proposed rule, we find the revisions to be consistent with these Federal requirements.

Montana's explanatory note justifying the proposed rule revision at (1)(f) ''acknowledges that success in terms of stability cannot be measured using a one-size-fits-all standard. Rather, it must be made on a case-by-case basis comparing the reclaimed land to unmined landscapes with comparable conditions.'' We agree with Montana's logic and a discussion responding to comments on the promulgation of 30 CFR 816.95(a) in a January 10, 1983 **Federal Register** notice (48 FR 1160) is supportive of this position. Specifically, we stated that ''[A]s with other performance standards proposed by OSM, regulatory authorities will have flexibility to develop stabilization measures consistent with local terrain, climate, soils, and other conditions existing within the State. Appropriate techniques to stabilize exposed areas can be determined by the regulatory authority and operators in conjunction with local Soil Conservation Districts and air quality agencies, as appropriate.'' Therefore, Montana has been afforded discretion to implement necessary stabilization measures with respect to exposed surface areas, including the reclamation of drainage basins. For the reasons discussed above, we find that Montana's proposed revisions are no less effective than the Federal requirements and we approve them.

9. ARM 17.24.718; Soil Amendments and Management Practices. Montana proposes to revise paragraph (2) and add a new paragraph (3) to read as follows:

(2) An operator may use only normal husbandry practices to ensure the establishment of vegetation consistent with the approved reclamation plan.

(3) Reclamation land use practices including, but not limited to, grazing, haying, or chemical applications, may not be conducted in a manner or at a time that interferes with establishment and/or persistence of seeded and planted grasses, forbs, shrubs, and trees or with other reclamation requirements.

Montana explains that the proposed revision to paragraph (2) requires operators to use only normal husbandry practices to manage reclaimed areas following seeding. Montana further states that normal husbandry practices are widely used and accepted by private, state, and federal land managers and land owners and have a proven track record of achieving appropriate revegetation for approved postmining land uses.

The Federal regulations at 30 CFR 816.116(c)(4) provide that the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director of OSM, in

accordance with 30 CFR 732.17, 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 revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands 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's proposed ARM 17.24.718(2) does not actually identify husbandry practices. It merely states that an operator may use only normal husbandry practices to ensure the establishment of vegetation consistent with the approved reclamation plan.

Based on the above discussion, we do not approve the proposed revision to ARM 17.24.718(2) and find that it is less effective than the Federal regulations at 30 CFR 816.116(c)(4) to the extent that it could be construed to authorize any normal husbandry practices other than those identified in proposed new paragraph ARM 17.24.718(3). If Montana wishes to include any normal husbandry practices other than those identified in ARM 17.24.718(3) that would not restart the liability period, they must be submitted as a program amendment and approved by OSM.

At its own initiative, Montana proposes new paragraph (3) to address management practices that could, if applied improperly, negatively impact revegetation and affect the operator's ability to obtain phase III bond release. The practices used by operators to manage vegetation on reclaimed areas include livestock grazing as well as haying and chemical applications. Montana further notes that under the proposed amendment, the operator would be responsible for using management practices that do not interfere with reclamation requirements.

We agree with Montana's rationale. Montana's proposed rule in paragraph (3) concerning reclamation land use practices is consistent with and no less effective than the Federal requirements for approved postmining land uses of the disturbed area set forth in 30 CFR 816.116(c)(4).

Therefore, with the exception of proposed ARM 17.24.718(2), which does not identify husbandry practices and allows an operator to use normal husbandry practices that have not received approval from OSM in accordance with 30 CFR 732.17, we approve Montana's proposed revisions to ARM 17.24.718.

10. ARM 17.24.726; Vegetation Measurements. Montana proposes to revise this rule extensively, to read as follows:

> (1) Standard and consistent field and laboratory methods must be used to obtain and evaluate vegetation data consistent with 82–4–233 and 82–4–235, MCA, and to compare revegetated area data with reference area data and/or with technical standards. Specific field and laboratory methods used and schedules of assessments must be detailed in a plan of study and be approved by the department. Sample adequacy must be demonstrated. In addition to these and other requirements described in this rule, the department shall supply guidelines regarding acceptable field and laboratory methods.
>
> (2) Production, cover, and density shall be considered equal to the approved success standard when they are equal to or greater than 90% of the standard with 90% statistical confidence, using an appropriate (parametric or non-parametric) one-tail test with a 10% alpha error.
>
> (3) The revegetated areas must meet the performance standards in (1) and (2) for at least two of the last four years of the phase III bond period. Pursuant to ARM 17.24.1113, the department shall evaluate the vegetation at the time of the bond release inspection for phase III to confirm the findings of the quantitative data.
>
> (4) The reestablished vegetation must meet the requirements of the Noxious Weed Management Act (7–22–2101 through 7–22–2153, MCA, as amended). (History: 82–4–204, MCA; *IMP*, 82–4–233, 82–4–235, MCA; *NEW*, 1980 MAR p. 725, Eff. 4/1/80; *AMD*, 1990 MAR p. 964, Eff. 5/18/90; *AMD*, 1994 MAR p. 2957, Eff. 11/11/94; *TRANS*, from DSL, 1996 MAR p. 3042; *AMD*, 1999 MAR p. 811, Eff. 4/23/99; *AMD*, 2004 MAR p. 2548, Eff. 10/22/04.)

Several of Montana's proposed revisions, including combining existing paragraphs (2) and (3) regarding statistical standards and deleting existing paragraphs (4) through (7) pertaining to diversity and seasonality standards, are the result of and reflect enactment of the provisions in HB 373 that were approved in our decision published in the February 16, 2005, **Federal Register** (70 FR 8001). Montana proposes to revise paragraph (1) by deleting the requirement that specific field and laboratory methods be detailed in the permit application, and replaces it with the requirement that such sampling methods be included in a plan of study approved by the Department. In its explanatory note, Montana states that ''submittal of a plan of study prior to conducting vegetation monitoring or sampling offers an opportunity to make adjustments when needed; if the plan is in the approved permit, revisions must be done through the minor revision process. Thus, the last change to this section is recommended as a more workable, as well as flexible, avenue for submittal and approval of vegetation monitoring/sampling plans.''

Montana's proposed revision conflicts with the Federal regulations at 30 CFR 780.18(b)(5)(vi), which require that each permit application contain a plan for reclamation and include measures proposed to be used to determine the success of revegetation, as required in 30 CFR 816.116, for the proposed permit area. In addition, the August 30, 2006 (71 FR 51684, 51691) **Federal Register** notice promulgating Federal revegetation success standards and responding to commenters' concerns noted that ''[B]ecause § 780.18(b)(5) requires each permit application to identify its proposed success standards and sampling techniques, this information is also available for public review.'' Therefore, Montana is free to require the submittal of a plan of study from operators, but sampling methods must be included in the permit application. For these reasons, we do not approve Montana's proposal in paragraph (1) to delete the requirement that sampling methods be included and detailed in the permit application.

11. ARM 17.24.1116; Bonding Criteria and Schedule for Release of Bond. Montana proposes to revise this rule by adding a new provision at subparagraph (6)(b)(iii) that provides previously undefined revegetation standards for Phase II bond release. The new provision states that reclamation phase II is deemed to have been completed when:

> Vegetation is establishing that is consistent with the species composition, cover, production, density, diversity, and effectiveness required by the revegetation criteria in ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, 17.24.731 and 17.24.815 and the approved postmining land use;

Montana notes that while renumbered (6)(b)(iv) requires the establishment of revegetation to the extent required to protect soil from accelerated erosion as a condition of phase II bond release, the rule does not provide standards for revegetation. Montana further states that the proposed amendment requires the revegetation to be consistent with the species composition, cover, production, density, diversity, and effectiveness criteria of the applicable rules and the approved postmining land use, although not to the extent that these standards have been achieved.

The Federal regulations at 30 CFR 800.40(c)(2) require that revegetation be established on regraded mined lands in accordance with the approved reclamation plan prior to Phase II bond release. The Federal regulations at 30 CFR 816/817.111(a) require that permittees establish on all regraded areas and disturbed areas a vegetative cover that is in accordance with the approved permit and reclamation plan and that is (1) diverse, effective and permanent; and (2) comprised of species native to the area, or introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority. Moreover, the Federal regulations at 30 CFR 816/817.116(a) and (b), respectively, require that the success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use and provide minimum required revegetation success standards to be applied with each approved postmining land use.

The cross-referenced provisions in Montana's proposed rule addresses the requirements for establishing successful revegetation on regraded and disturbed areas. The proposed rule provides additional guidance and specificity to ensure that the established revegetation is compatible with the approved postmining land use, and the standards for success are in accordance with the requirements necessary to secure phase II bond release. For these reasons, Montana's proposed rule defining revegetation standards for Phase II bond release is no less effective than the Federal regulations at 30 CFR 800.40(c)(2), 816/817.111(a), and 816/817.116(a) and (b) and we are approving it.

Montana also proposes to revise its rules at subparagraphs (6)(c)(i), (ii), and (iii) by ensuring that evaluations of reclamation success at Phase III bond release are applicable to and consistent with the approved postmining land use. For the same reasons discussed above, we approve Montana's proposed revisions as being no less effective than the Federal regulations at 30 CFR 800.40(c)(3) and 816/817.116(a) and (b).

12. ARM 17.24.1202; Consequences of Inspections and Compliance Reviews. Montana proposes to revise this rule by adding criteria in paragraph (2) concerning the Department's issuance of notices of noncompliance and orders of cessation in accordance with 82–4–251, MCA, which may result from an inspection; adding a provision in paragraph (3) reflecting the Department's statutory authority, as contained in 82–4–237(3), MCA, to order changes in the mining and reclamation plans to give a complete list of actions the Department may take to ensure compliance with the Act following an inspection; and adding a provision in paragraph (4) that allows the Department to order an operator to investigate and submit a report detailing a corrective course of action for unsuccessful reclamation efforts when they cannot be cured by an abatement order in the context of a violation action because they were conducted according to the permit.

Montana's proposed revision to paragraph (2) is consistent with the Federal regulations at 30 CFR 840.13(b) regarding enforcement authority, as well as the cross-referenced provision at 30 CFR 843.12(a)(1) addressing determinations as to when a notice of violation is to be issued. Moreover, paragraph (2) is consistent with Montana's approved statutory provision at 82–4–251, MCA, regarding noncompliance and the suspension of permits. Paragraphs (3) and (4) impose additional requirements on permittees as a result of enforcement actions. Paragraph (3) is consistent with the statutory provision at 82–4–237(3), MCA, requiring changes in the mining and reclamation plans. Lastly, both SMCRA 521(d) and the Federal regulations at 30 CFR 840.13(d) provide that nothing therein ''shall be construed as eliminating any additional enforcement rights or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated'' in either SMCRA or the Federal regulations. Therefore, the additional compliance requirements in paragraphs (3) and (4) are no less stringent than SMCRA and are consistent with the Federal regulations. For the reasons discussed above, we are approving Montana's proposed rules at ARM 17.24.1202(2)–(4).

Related to the finding above is Montana's proposed repeal of its existing provision at ARM 17.24.720 regarding Annual Inspections for Revegetated Areas. The cross-reference to this provision was previously located in existing ARM 17.24.1202(2), which has also been proposed for deletion. Montana's stated purpose for proposing both revisions is because the provisions for inspecting revegetated areas are restated in a broader context in paragraph (4) of proposed ARM 17.24.1202. Under that rule, the Department is required, based on a field inspection or review of records or reports, to order the operator to immediately investigate the cause of unsuccessful revegetation and the operator is required to subsequently submit an investigative report detailing a corrective course of action. This approach is appropriate to address other aspects of reclamation that are discovered to be unsuccessful. Nevertheless, quarterly and annual Departmental oversight of reclamation efforts (including revegetation) will continue through both the partial and complete inspection requirements of ARM 17.24.1201. For these reasons, we are approving Montana's proposed repeal of ARM 17.24.720.

G. Removal of Required Amendments

1. Required Amendment at 30 CFR 926.16(e)(1), the Definition of ''Road''

In response to the required program amendment at 30 CFR 926.16(e)(1), Montana proposes to revise its rules at ARM 17.24.301(107) regarding the definition of ''Road'' by deleting language that excluded pioneer and construction roadways. The Federal definition at 30 CFR 701.5 was revised on November 8, 1988 (53 FR 45190, 45210), to eliminate the previous exclusion of pioneer and construction roadways, thereby making them subject to those road performance standards at 30 CFR 816/817.150–151 which are applicable to road construction. For this reason, we noted in the August 19, 1992, **Federal Register** (57 FR 37438), that Montana's proposed definition of ''road,'' by excluding pioneer and construction roadways, was less effective than the Federal definition. Consequently, we required Montana to clarify that pioneer and construction roadways are subject to any general performance standards applicable to road construction. Montana's proposed deletion of the provision excluding pioneer and construction from its definition of ''road'' makes it consistent with and no less effective than the Federal definition at 30 CFR 701.5 and the performance standards for road construction set forth at 30 CFR 816/817.150–151, and we are removing the required program amendment at 30 CFR 926.16(e)(1).

2. Required Amendment at 30 CFR 926.16(k), the Definition of ''Historically Used for Cropland''

In response to the required program amendment at 30 CFR 926.16(k), Montana proposes to revise its rules at ARM 17.24.301(53) regarding the definition of ''Historically used for cropland'' by adding provision (c) to address lands that likely would have been used as cropland for any five or more years out of the 10 years immediately preceding their acquisition [including purchase, lease, or option of

the land for the purpose of conducting or allowing, through resale, lease or option, strip of underground coal mining and reclamation operations] but for the same fact of ownership or control of the land unrelated to the productivity of the land, in accordance with the Federal regulations at 30 CFR 701.5.

Montana's proposed definition is substantively the same as the Federal definition of ''Historically used for cropland.'' Therefore, we have determined that Montana's program is consistent with and no less effective than the Federal regulations at 30 CFR 701.5 and remove the required program amendment at 30 CFR 926.16(k).

3. Required Amendment at 30 CFR 926.16(l), Public Notice and Opportunity to Comment on Coal Prospecting Permit Applications

In response to the required program amendment at 30 CFR 926.16(l), Montana proposes to revise its rules at ARM 17.24.1001(2)(q) concerning Permit Requirement by adding cross-references that modify its program to conform to the permit issuance procedures for public notice and opportunity to comment on coal prospecting permit applications and be no less effective than the Federal requirements at 30 CFR 772.12(c). Specifically, Montana proposes language requiring that an application for a prospecting permit must be made on forms provided by the Department and must be accompanied by ''the proposed publication, in accordance with ARM 17.24.303(23). The procedures of ARM 17.24.401(3) and (5), 17.24.402, and 17.24.403 must be followed in the processing of a prospecting permit application.'' Montana's reference to ARM 17.24.303(23) is a typographical error and should read as ARM 17.24.303(1)(w). Montana is aware of this typographical error and has indicated that it will correct the mistake in the State's next rulemaking (Administrative Record No. MT–22–13). Referenced ARM 17.24.401(3) addresses the requirements associated with the filing of an application and notice. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(c)(1) and (2) regarding public notice and opportunity to comment. ARM 17.24.401(3)(c) also references paragraph (6), which requires that the complete permit application be made available for public inspection and copying. This provision is consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.15(a) addressing public availability of information. Although it is not referenced in proposed ARM 17.24.1001(2)(q), Montana's rules at ARM 17.24.303 address the legal, financial, compliance and related information required in permit applications. Specifically, ARM 17.24.303(n) states, in pertinent part, that ''* * * The applicant may request confidentiality on any proprietary information within such documents.'' This provision is consistent with and no less effective than the corresponding Federal requirement at 30 CFR 772.15(b) regarding an applicant's request that proprietary information submitted as part of a permit application be kept confidential. Referenced ARM 17.24.401(5) addresses the requirement to provide written notification of Departmental decisions on permit applications to appropriate Federal, state, and local government officials. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(e)(1).

In the January 22, 1999 **Federal Register** (64 FR 3615) notice, we stated that Montana's proposal did not provide for permit issuance procedures which would include such requirements as ''administrative and judicial appeals.'' In proposed ARM 17.24.1001(2)(q), referenced ARM 17.24.403 allows any person whose interests are or may be adversely affected by the Department's decision on a prospecting permit application submitted pursuant to ARM 17.24.401(1) to request that the Department hold an informal conference on that application. In addition, Montana's rules at ARM 17.24.425 provide for administrative review in the form of a contested case hearing to review the final decision of the Department concerning prospecting permit applications submitted under ARM 17.24.401. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(e)(2) insofar as the requirement to provide an opportunity for administrative appeal and review of Departmental decisions is concerned.

Montana's statutes at 82–4–206(1)(b), MCA, allow an applicant, permittee, or person with an interest that is or may be adversely affected by a decision by the Department approving or denying an application for a prospecting permit to request, in writing, a hearing before the Montana Board of Environmental Review within 30 days after the Department's decision. Montana's statute at 82–4–206(2), MCA, states that the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under subsection (1). After a contested case is heard before the Board of Environmental Review and it has rendered a decision, the decision may be appealed to district court, pursuant to the Montana Administrative Procedures Act provisions at 2–4–702, MCA. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(e)(2) insofar as the requirement to provide an opportunity for judicial appeal and review of Departmental decisions is concerned.

Referenced ARM 17.24.402 addresses requirements for submitting comments and written objections to Department decisions on permit applications. Specifically, ARM 17.24.402(2)(a) affords any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority the right to file written objections to an initial or revised application with the Department within 30 days after the last publication of the newspaper notice required in ARM 17.24.401(3). This provision is consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(c)(3).

Montana also proposes to revise its rules by adding new language at ARM 17.24.1001(6)(a)–(d) to maintain consistency with the Federal requirements regarding decisions on coal prospecting permit applications. These provisions are consistent with and no less effective than the corresponding Federal requirements at 30 CFR 772.12(d)(1) and (2).

Lastly, Montana proposes to add a new provision in paragraph (7) that provides an administrative mechanism for transferring prospecting-related activities and facilities to a valid mining permit whenever such activities or facilities become part of mine operations. The Federal regulations at 30 CFR 772.12(d)(3) require that terms of approval for coal exploration permit applications issued by regulatory authorities shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the regulatory program. Proposed paragraph (7) imposes just such a condition. Therefore, while there is no exact Federal counterpart to Montana's newly-added provision, we find it to be no less effective than the Federal requirements. We also note that the cross-reference to ARM 17.24.308(2) in proposed paragraph (7) is a typographical error and should read as

ARM 17.24.308(b). Montana is aware of this typographical error and has indicated that it will correct the mistake in the State's next rulemaking (Administrative Record No. MT–22–14).

For the reasons discussed above, we have determined that Montana's program is consistent with and no less effective than the Federal regulations at 30 CFR 772.12(c), (d) and (e), and 772.15, and we are removing the required program amendment at 30 CFR 926.16(l).

4. Required Amendment at 30 CFR 926.16(m), Replacement of Adversely Affected Domestic Water Supplies

In response to the required program amendment at 30 CFR 926.16(m), Montana proposes to revise its rules at ARM 17.24.903(2) regarding General Performance Standards for underground coal mining by adding language that requires adversely affected water supplies to be replaced in accordance with the statutory provisions at MCA 82–4–243 (subsidence) and 82–4–253 (suit for damage to water supply), respectively, and its rule at ARM 17.24.648 (water rights and replacement), which refers to water supply for ''domestic'' use. Montana also deletes the requirement at ARM 17.24.911(7)(d) regarding Subsidence Control to ''replace any adversely affected domestic water supply.''

In the August 6, 2003, **Federal Register** (68 FR 46477) notice, we stated that Montana's proposed rule at ARM 17.24.911(7)(d) was too narrow in scope because it limited the water-replacement requirement to instances where subsidence has occurred and that subsidence has caused material damage or reduced the value or use of surface lands. The Federal requirement at 30 CFR 817.41(j) is not so limited, and applies to water supply contamination, diminishment, or interruption by any underground mining activities, regardless whether or not subsidence has occurred. We further noted that the sentence requiring water replacement in Montana's statutory provision for water replacement for underground mines at MCA 82–4–243 does not contain any limitation to subsidence, even though the entire section is entitled ''Subsidence.'' For this reason, we did not approve the proposed rule and required Montana to further amend its rules to require the prompt replacement of any drinking, domestic or residential water supply that is contaminated, diminished, or interrupted by underground mining activities, regardless of the occurrence of subsidence or whether subsidence has caused material damage or reduced the value or use of surface lands, to be no less effective in meeting the requirements of SMCRA 720(a)(2) than is 30 CFR 817.41(j).

As was mentioned previously, Montana's statutory provision for water replacement for underground mines at MCA 82–4–243(1)(b) does not contain any limitation to subsidence. In addition, the statutory requirement for replacement of water supplies affected by mining generally is provided for in MCA 82–4–253(3). Lastly, Montana's proposal to move the provision requiring replacement of adversely affected domestic water supplies from ARM 17.24.911(7)(d) to ARM 17.24.903, which contains general performance standards and requires replacement of all water supplies adversely affected by a permittee's operation, addresses our concern that water replacement for underground mines was limited to instances where subsidence had occurred. Based on the information provided by Montana, we have determined that Montana's program is consistent with and no less effective in meeting the requirements of SMCRA 720(a)(2) than is 30 CFR 817.41(j), and remove the required program amendment at 30 CFR 926.16(m).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. MT–22–3) and received four comment letters (two from the same group).

We received an extensive comment letter from a private citizen on January 18, 2006 (Administrative Record No. MT–22–7). The letter contained both general and narrative comments, as well as many section-by-section and minor editorial comments.

We also received two comment letters from the Bull Mountain Land Alliance (BMLA) (Administrative Record Nos. MT–22–8 and MT–22–11). These letters also contained both general and narrative comments, as well as several section-by-section comments that identified and asserted, without additional explanation, specific portions of Montana's proposed rule changes as being in conflict or inconsistent with our decision in the February 16, 2005, **Federal Register** notice.

Lastly, we received a comment letter from a second private citizen on January 28, 2006 (Administrative Record No. MT–22–9). The letter contained general and narrative comments regarding the restoration of hydrologic balance.

All four of the letters contained both general and narrative, as well as section-by-section comments that were directed either explicitly or implicitly to the Montana Department of Environmental Quality for response. In addition, several of the comments focused on the previously identified flaws in HB 373 (MT–024–FOR) and OSM's subsequent decision thereon in the February 16, 2005 **Federal Register** Notice. In this case, the provisions that were disapproved by OSM in that amendment are also disapproved here and do not need to be addressed again. Also noted among the general comments were statements that the current sections of the MCA that are posted on the internet have been cleaned up to comply with OSM's February 16, 2005 decision regarding HB 373, but that extensive noncompliant language has not been deleted from the proposed regulations. In response, Montana notes in its proposed regulations that it has not yet deleted the unacceptable language because it will take another rulemaking to do so. Finally, a number of the comments alleged generally perceived problems with the Montana Program and its interpretation and anticipated implementation of the proposed rules.

In response, we note that we cannot comment here on how statutory or regulatory requirements are applied. The application of requirements to specific cases, including what standards are applicable to which parts of which mines over time, is subject to administrative and judicial review as part of the Montana program, and possibly under other parts of Montana law as well. In its regular oversight of State regulatory programs, OSM reviews the implementation of regulatory programs; OSM seeks input from the public (including the industry) in determining what parts of program implementation to review. Here we can comment only on the establishment of statutory and/or regulatory requirements. We note that when we initially approved the Montana program under SMCRA in 1980, OSM determined that the Montana program met SMCRA requirements. And in this action, we are also determining whether the proposed amendment is in accordance with SMCRA and the Federal regulations.

OSM's standard for review of State programs, as set forth in SMCRA 503(a), requires a State to demonstrate that it has the capability to carry out the provisions of the Act and meet its purposes through: (1) A State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of SMCRA; and (2) rules and regulations

consistent with regulations issued by the Secretary pursuant to SMCRA. Therefore, we will only address substantive comments to Montana's proposed rules that specifically allege inconsistencies and conflicts with SMCRA and/or the Federal regulations, and not general comments regarding internal decisionmaking and implementation functions that exist within the Montana program.

One private citizen and the BMLA commented that subparagraph (c) of Montana's revised definition of ''approximate original contour'' at ARM 17.24.301(13) concerning the phrase ''and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area'' is in conflict and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice regarding HB 373. In response, we refer the commenters to the discussion at Finding No. III.A. above regarding ''contingent voidness.'' The BMLA also commented that subparagraph (d) of the definition requiring that the reclaimed surface configuration be appropriate for the postmining land use is in conflict and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we note that this requirement is identical to the corresponding statutory provision at 82–4–203(4)(d), MCA, that we approved in the February 16, 2005, **Federal Register** notice (70 FR 8001, 8004) regarding HB 373. In approving that provision, we found that it did not render the definition inconsistent with SMCRA, ''provided the definition is interpreted as requiring that all four subparagraphs apply; that is, that subparagraph (d) does not take precedence over subparagraphs (a) through (c).'' We further stated that ''[T]o be no less effective than the Federal definition of AOC, subparagraph (d) may not be interpreted as authorizing selection of a postmining land use that would necessitate a deviation from the remainder of the AOC definition; i.e., the postmining land topography must still closely resemble the general surface configuration of the land prior to mining regardless of the nature of the approved postmining land use.'' Consistent with the above reasoning, we are approving subparagraph (d) of Montana's revised definition of ''approximate original contour'' at ARM 17.24.301(13)(d).

All three commenters either generally or specifically noted that Montana's proposed definition of ''hydrologic balance'' at ARM 17.24.301(54) concerning the phrase ''as they relate to uses of land and water within the area affected by mining and the adjacent area'' does not comply with SMCRA, the Federal regulations, and OSM's decision in the February 16, 2005, **Federal Register** notice regarding HB 373. In response to these concerns, we again direct the commenters to the discussion at Finding No. III.A. above regarding ''contingent voidness.''

One private citizen commented that Montana's proposed revision to the definition of ''incidental boundary revisions'' at ARM 17.24.301(59) equates to a 10-times increase and is rather significant. Montana's stated reason for proposing the revision is that incidental boundary revisions are exempt from public notice and comment provisions applicable to permit amendments, and for strip mines 100 acres is a small area compared to the total mine acreage. Furthermore, incidental boundary revisions may not be used to increase the mined area. They only involve associated disturbances that have less impact than mining. OSM Directive REG–19, which delineates the criteria for determining incidental boundary revisions, does not include limitations on acreage. Moreover, we agree with the logic underlying Montana's proposal to increase its incidental boundary revision criteria from 10 to 100 acres and find it to be reasonable with respect to regional strip mining conditions, consistent with 30 CFR 774.13(d), and no less stringent than SMCRA 511(3).

The BMLA commented that Montana's proposed definition of ''material damage'' at ARM 17.24.301(67) is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In response, we note that Montana's proposed definition contains identical language to the ''material damage'' definition we approved in the February 16, 2005 final rule and refer the commenter to Finding No. III.D.

The BMLA also commented that subparagraphs (1)(e)(ii), (f), (h)(i) and (x) of Montana's proposed rule at ARM 17.24.313 concerning reclamation plan requirements are in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In response, we refer the commenter to Finding Nos. III.C. and III.F.3. for an explanation as to why these provisions are being approved in accordance with the Federal regulations.

Next, the BMLA commented that Montana's proposed deletion of its grazing plan rules at ARM 17.24.323 is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In response, we refer the commenter to Finding No. III.E.2. for an explanation as to why this deletion is being approved.

One private citizen commented that Montana's proposed deletion of subparagraph (3) of its rules at ARM 17.24.522, concerning permanent cessation of operations, provides an open-ended time frame for reclamation to be completed. We disagree with this comment and submit that the deletion of subparagraph (3) does not leave an open-ended time frame as ARM 17.24.501(6)(b) requires backfilling and grading to be completed within two years after coal removal. Considering the size and extent of the surface mining operations in Montana, requiring operators to complete backfilling and grading operations within 2 years after coal removal ceases is both reasonable and realistic. The commenter is referred to Finding No. III.E.4. for an explanation as to why this deletion is being approved.

One private citizen and the BMLA commented that Montana's proposed revision to paragraph (2) of ARM 17.24.633, concerning water quality performance standards, is in conflict with SMCRA and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we refer the commenters to Finding No. III.E.5. for an explanation as to why this proposed revision is being approved.

One private citizen and the BMLA also commented that Montana's proposed revision to subparagraphs (1)(f), (h), and (i) of ARM 17.24.634, concerning reclamation of drainage basins, is in conflict with SMCRA and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we refer the commenters to Finding No. III.F.8. for an explanation as to why this proposed revision is being approved.

One private citizen commented that section (1)(e) of proposed ARM 17.24.639, concerning sedimentation ponds and other treatment facilities, does not make sense when reference 17.24.642(3) is consulted. The commenter is mistaken regarding this reference. ARM 17.24.639(1)(e) references paragraph (7) of 17.24.642 and not paragraph (3).

Both the BMLA, and to a lesser extent one private citizen, commented that proposed subparagraphs (1)(a)(1) and (2) of ARM 17.24.711, concerning establishment of vegetation, is in conflict with SMCRA and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we refer the commenters to Finding No. III.E.6. for an explanation as to why proposed subparagraph (1)(a)(1) is being approved, and Finding No. III.D. for subparagraph (1)(a)(2).

The BMLA commented that Montana's proposed revision to paragraph (1) of ARM 17.24.716, concerning method of revegetation, is in conflict or inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In its explanatory note, Montana states that the proposed amendment to paragraph (1) deletes unnecessary language and that cover and productivity standards are covered later in subchapter 7. We agree with Montana's reasoning and note that Montana's proposed amendment essentially provides more specificity than do the Federal rules. Moreover, this provision has been included under Finding No. III.C. as having the same meaning as the Federal regulations at 30 CFR 816.111(a) and (b) regarding general revegetation requirements, and 780.18(b)(5) concerning general reclamation plan revegetation requirements.

The BMLA further commented that Montana's proposed revision to paragraph (1) of ARM 17.24.717, concerning planting of trees and shrubs, is in conflict or inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. We disagree. In its explanatory note, Montana states that the proposed amendment fills a gap in the current rules by broadening ARM 17.24.717 to include planting requirements for shrubs. Montana further notes that shrubs are a woody species like trees and, thus, should be treated similarly. Lastly, Montana explains that the additional provisions of the proposed amendment require the planting of trees and shrubs as necessary to achieve the postmining land use to reflect the statutory requirement of 82–4–233(2)(a), MCA, and allow an operator flexibility in the timing of herbaceous seeding to reduce competition with the tree and shrub plantings/seedings. We agree with Montana's reasoning and note that the statutory requirement was approved by us in the February 16, 2005, **Federal Register** notice as exactly duplicating the Federal rules at 30 CFR 816/817.111(b) regarding general revegetation requirements. Accordingly, this provision has been included under Finding No. III.C. as having the same meaning as the Federal regulations at 30 CFR 816.111(b) regarding general revegetation requirements, and 816.116(b)(3)(ii) and (iii) concerning the postmining land use requirements for trees, shrubs, and vegetative cover.

The BMLA commented that Montana's proposed revision to paragraph (2) and addition of paragraph (3) to its rules at ARM 17.24.718, concerning soil amendments, management techniques, and land use practices, is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In response, we refer the commenter to Finding III.F.9. for an explanation regarding these proposed revisions.

One private citizen commented that newly-added section (2) of ARM 17.24.724, concerning revegetation success criteria, says nothing about the reference area being unmined, and that one of the standards by which to judge reclamation is by comparison to unmined reference areas. The commenter's concerns are misplaced. Section (2) provides a description of reference areas chosen for comparison, whereas revised section (1) requires that the success of revegetation be determined by comparison with unmined reference areas, or by comparison with technical standards.

The BMLA commented that Montana's proposed deletion of paragraph (4) of its rules at ARM 17.24.726, concerning vegetation measurements, is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. In its explanatory note, Montana states that the diversity standards currently existing in (4) were modified by the 2003 legislative changes to the Act (codified in 82–4–235(1)(d), MCA), and are proposed for deletion. However, OSM's decision on these legislative changes published in the February 16, 2005, **Federal Register** disallowed the diversity standard in 82–4–235(1)(d), MCA, as promulgated by the 2003 legislature. Thus, Montana notes that it may need to reestablish a diversity standard in its next rule-making. For the reasons that follow, we will defer to the State with regard to this decision.

Neither SMCRA nor the Federal regulations define ''diverse.'' But pertinent discussion is found in preambles to Federal regulations, which themselves discuss House Report No. 95–218 (see 47 FR 12597, March 23, 1982, and 48 FR 48141–48146, September 2, 1983). The rule preambles cited above state that: ''Diverse'' means sufficiently varied amounts and types of vegetation to achieve ground cover and support the postmining land use. The precise numbers required to achieve this diversity should be determined by regional climate and soil conditions. However, the ultimate test will be the sufficiency of the plant communities to assure survival of adequate number and varieties to achieve the postmining land use and the required extent of ground cover.

The standards set forth in Montana's statutes at 82–4–233(1), MCA, regarding the general requirements for a diverse, effective, and permanent vegetative ground cover approved as part of the postmining land use and in accordance with the approved permit and reclamation plan are consistent with the Federal regulations at 30 CFR 816.111(a) which directly implement, with increased detail, SMCRA 515(b)(19). Further, 816.116(a)(1) provides that standards for success shall be selected by the regulatory authority. Therefore, while there is no exact Federal equivalent with respect to diversity standards, Montana's proposed deletion of paragraph (4) noted in Finding No. III.F.10 falls within the State's discretion to specify, according to the Federal regulations.

The BMLA commented that Montana's proposed addition to its rules at ARM 17.24.762(1)(a)–(d) concerning postmining land use, is in conflict with OSM's February 16, 2005 final rule **Federal Register** notice. We disagree and refer the commenter to Finding No. III.C. In its explanatory note, Montana states that the proposed amendment to paragraph (1) reflects the 2003 Legislature's enactment of HB 373 by adding references to 82–4–203(28) and 82–4–232(7), MCA, the statutory provisions reflecting the new reclamation standards. Montana further notes that the proposed addition of subparagraphs (1)(a) through (d) incorporates provisions that are necessary, in some instances, to determine the premining land use and compare the alternative postmining land use with the premining land use. These provisions were previously set forth in ARM 17.24.824, a rule addressing alternate reclamation that is proposed for repeal. In promulgating ARM 17.24.824, Montana relied on Federal regulations that actually applied to ''alternative postmining land uses.'' Thus, Montana asserts that it is appropriate to transfer these provisions from ARM 17.24.824 to 17.24.762 because they are still relevant and required by Federal regulations at 30 CFR 816/817.133.

We agree with Montana's underlying rationale for relocating existing language from its alternate reclamation rules at ARM 17.24.824(2) to implement the statutory alternative postmining land use requirements at 82–4–232(7), MCA, regarding land use capability, that were enacted in HB 373 and approved by us in the February 16, 2005, **Federal Register** (70 FR 8002) as being consistent with and no less effective than SMCRA 515(b)(2) and the Federal regulations at 30 CFR 816/817.133.

The BMLA further commented that Montana's proposed revision to

subparagraphs (1)(a) of ARM 17.24.823, concerning the approval of alternative postmining land use plans, is in conflict or inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. We disagree and refer the commenter to our discussion in Finding No. III.F.4. In its explanatory note, Montana states that the proposed amendment to paragraph (1) reflects the 2003 Legislature's enactment of HB 373, substituting ''alternative postmining land use'' for ''alternate reclamation.'' Montana further explains that the proposed amendment to subparagraph (1)(a) cites approval criteria for alternative postmining land uses enacted by the 2003 Legislature in HB 373. We agree with Montana and note that the ''alternative postmining land use'' requirements at 82–4–232(8), MCA, regarding land use capability were enacted in HB 373 and approved by us in the February 16, 2005, **Federal Register** (70 FR 8002) as being consistent with and no less stringent than SMCRA 515(b)(2) and no less effective than the Federal regulations at 30 CFR 816/817.133. Similarly, the alternative postmining land use requirements at 82–4–232(9), MCA, concerning wildlife enhancement were approved (70 FR 8002) as being no less stringent than SMCRA 515(b)(24). Thus, Montana's proposed revisions to its rules implementing the previously approved statutory alternative postmining land use criteria are appropriate.

Both the BMLA, and to a lesser extent one private citizen, commented that proposed subparagraph (6)(b)(iii) of ARM 17.24.1116, concerning bonding criteria and schedule for release of bond, is in conflict with SMCRA and inconsistent with OSM's decision in the February 16, 2005, **Federal Register** notice. In response, we refer the commenters to Finding No. III.F.11. for an explanation as to why proposed subparagraph (6)(b)(iii) is being approved. The same finding addresses the BMLA's similar comment regarding revised subparagraphs (6)(c)(i), (ii) and (iii).

Both the BMLA and one private citizen commented that Montana's proposed revisions to its rules at ARM 17.24.1202, regarding consequences of inspections and compliance reviews, weakens the concept of the powers of an inspector on the ground below Federal standards. The commenters further stated that Section 517(e) of SMCRA says that upon detection of a violation, the inspector informs the operators and reports in writing any such violation to the regulatory authority. The Department can rule on the violation later, but the inspector on the ground has the power to write it. Lastly, the commenters asserted that the inspector is a law enforcement officer and his ability to write violations is central to effective enforcement. In response, we refer the commenters to Finding No. III.F.12. for an explanation as to why Montana's proposed revisions to ARM 17.24.1202 are approved as being no less stringent than SMCRA and no less effective than the Federal regulations.

The private citizen further commented that Montana's proposed revision to its rules at ARM 17.24.1201, concerning frequency and methods of inspections, omits a counterpart to the Federal rules at 30 CFR 840.11(d)(2) regarding reporting requirements for aerial inspections. We agree with the commenter and note that Montana recognizes this omission and has committed to propose a State counterpart provision in its next rulemaking (Administrative Record No. MT–22–12).

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. MT–22–3). We received comments from two Federal Agencies.

The Bureau of Land Management (BLM) commented in an October 6, 2005 letter (Administrative Record No. MT–22–4), and the Bureau of Indian Affairs (BIA) commented in an October 12, 2005 memorandum (Administrative Record No. MT–22–5).

The BLM commented on Montana's proposed addition of subparagraph (4) to ARM 17.24.322, concerning Geologic Information and Coal Conservation Plan, which allows the Department to review all applicable coal recovery information retained by the BLM for an operator with a Federal Resource Recovery and Protection Plan in lieu of or in addition to other information requirements. Specifically, the BLM stated that it treats information designated as Proprietary/Confidential contained in the Resource Recovery and Protection Plan subject to the requirements of the Freedom of Information Act (FOIA). The BLM further stated that release of this information to the Montana DEQ will require compliance with established rules and procedures. In response, we agree with the BLM's comment that any proprietary and confidential information sought by the Montana DEQ and contained in the Resource Recovery and Protection Plan will need to be scrutinized under the protections of the FOIA.

The BLM also commented on Montana's explanatory note which states that the proposed addition of paragraph (4) provides for an alternative source of relevant information for Department review that may preclude the need for the applicant to generate new or additional documents. Specifically, the BLM stated that the rationale is vague in that information contained in the Resource Recovery and Protection Plan is not ''new'' data, and that the operator already has this information on hand and would gladly supply it to the Montana DEQ if requested. In response, we acknowledge the BLM's comment and suggest that since the information contained in the Resource Recovery and Protection Plan has traditionally not been requested from operators in the past, it may be considered to be an alternative, new, and additional source of information in the context of the Montana DEQ's newly-proposed rule.

The BIA indicated that it did not have concerns about the proposed amendment, but provided specific concerns of an editorial nature as follows:

Page 13, Section 17.24.306(3): The U.S. natural resources conservation service should be capitalized.

Page 15, Section 17.24.312(2): The U.S. fish and wildlife service should be capitalized.

Page 21, Section 17.24.322(4): The bureau of land management should be capitalized.

Page 21, Section 17.24.323 has been struck. However, the ''History'' section remains. We don't understand the rationale for leaving the ''History'' component.

Page 24, Section 17.24.405(5): The end of the sentence is marked by a division symbol than a hyphen or colon.

In response, we acknowledge the BIA's editorial comments and are alerting Montana of the need to make these corrections by virtue of this **Federal Register** final rule notice. We also note that, according to Montana, the ''History'' section remains in Montana's rules following the deletion of a provision because of the State requirement for repealed rules in which the rule number, title, and history must remain intact. This requirement is to allow for tracking of repealed rules, and to indicate a rule number that can never be used again.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. MT–22–3). EPA did not respond to our request.

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. On September 13, 2005, we requested comments on Montana's amendment (Administrative Record No. MT–22–3), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve, with certain exceptions and an additional requirement, Montana's August 29, 2005 amendment. We do not approve the following provisions or parts of provisions.

As discussed in Finding No. III.E.6, and consistent with the February 16, 2005 **Federal Register** Notice addressing identical statutory language, we are approving ARM 17.24.711(1)(a) with the proviso that the exemption for ''and other constructed features'' not be applied until Montana promulgates implementing rules to limit the exemption and OSM has approved those rules.

We are removing existing required amendments and approving, as discussed in: Finding No. III.G.1, ARM 17.24.301(107), concerning the definition of ''Road;''; Finding No. III.G.2, ARM 17.24.301(53), concerning the definition of ''Historically used for cropland;'' Finding No. III.G.3, ARM 17.24.1001(2)(q), concerning permit issuance procedures for public notice and opportunity to comment on coal prospecting permit applications; and Finding No. III.G.4, ARM 17.24.903(2), concerning replacement of water supplies harmed by underground mining activities.

As discussed in Finding No. III.F.9, we do not approve revised ARM 17.24.718(2), concerning Montana's allowance for an operator to use husbandry practices that have not received approval from OSM.

As discussed in Finding No. III.F.10, we do not approve revised ARM 17.24.726(1), concerning Montana's proposal to delete the requirement that sampling methods be included and detailed in the permit application.

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 OSM'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 OSM 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 OSM. 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 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 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.

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 impact 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 2, 2007.

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
*	*	* * * * *
August 31, 2005	October 10, 2007 ...	ARM 17.24.301(6); 17.24.301(11); 17.24.301(13) (intro) and (a), (b), and (d); 17.24.301(26); 17.24.301(33); 17.24.301(36); 17.24.301(38); 17.24.301(46); 17.24.301(50); 17.24.301(54); 17.24.301(59); 17.24.301(64); 17.24.301(64)(b), (c), (d), (g), and (h); 17.24.301(67); 17.24.301(90); 17.24.301(103); 17.24.301(107)(b); 17.24.301(143); 17.24.302; 17.24.303(1)(w), (x), and (y); 17.24.305(2)(b)(i); 17.24.308(1)(b)(vii); 17.24.312(1)(b); 17.24.313; 17.24.321(1) and (3); 17.24.322(2)(a)(x) and (4); 17.24.323; 17.24.324(1)(e); 17.24.401(3)(f) and (5)(a)(iv); 17.24.404(9) and (10); 17.24.405(1) and (2), (6)(j), and (7); 17.24.416(1)(b); 17.24.413(1)(f); 17.24.427(1)(a), (c) and (2); 17.24.501(4)(a), (d) and (6)(d); 17.24.515; 17.24.522(3); 17.24.603(4); 17.24.605(8); 17.24.609(1); 17.24.623(2) and (5)(b); 17.24.624(4), (6)(a), (7)(a), (11) and (14); 17.24.626(1)(j); 17.24.633(2); 17.24.634; 17.24.636(2) and (3); 17.24.639(2), (3) and (7); 17.24.642(1)–(7); 17.24.646(4); 17.24.701(4); 17.24.702(4)(b) and (6); 17.24.711; 17.24.714(1); 17.24.716(1), (3), (4), and (5); 17.24.717(1); 17.24.718(3); 17.24.719; 17.24.720; 17.24.724(1)–(3); 17.24.726 except at (1) the proposed deletion of the phrase ''the application and must;'' 17.24.728; 17.24.751(1) and (2)(a), (c), (e), and (f); 17.24.762(1)(a)–(d), (2), and (3); 17.24.764; 17.24.815(1)(a)(i), (ii) and (b); 17.24.821; 17.24.823; 17.24.824; 17.24.825; 17.24.826; 17.24.832(4) and (5)(b) and (c); 17.24.1001; 17.24.1104(1) and (3); 17.24.1108(1), (2) and (4); 17.24.1109(1)(d)–(g); 17.24.1116; 17.24.1125(2); 17.24.1132(1)(a); 17.24.1133(2)(a), (b), and (3); 17.24.1201(1)–(4); 17.24.1202; 17.24.1301; also all minor, editorial, and codification changes.

§ 926.16 [Amended]

■ 3. Section 926.16 is amended by removing and reserving paragraphs (e)(1), (k), (l) and (m).

[FR Doc. E7–19851 Filed 10–9–07; 8:45 am]

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