§ 926.30 State-Federal cooperative agreement.

COOPERATIVE AGREEMENT

The Governor of the State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a State-Federal Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: AUTHORITY, PURPOSES, AND RESPONSIBLE AGENCIES

A. Authority

This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary, under 30 U.S.C. 1253, to elect to enter into an agreement for State control and regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR Group 3400, and surface coal mining and reclamation operations and activities in Montana on Federal lands consistent with SMCRA, the Federal lands program (30 CFR) Chapter VII, Subchapter D, and the Montana State Program (State Program), including among other things, the Montana Strip and Underground Mine Reclamation Act, part 2, Chapter 4, Title 82, Montana Code Annotated (State Act or MCA).

B. Purposes

The purposes of the Agreement are to (1) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations on Federal lands and coal exploration operations not subject to 43 CFR Group 3400; (2) minimize intergovernmental overlap and duplication; and (3) provide effective and uniform application of the State Program on all non-Indian lands in Montana.

C. Responsible Agencies

The Montana Department of Environmental Quality (DEQ) shall administer this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

Upon signing by the Secretary and the Governor, this Agreement will take effect 30 days after final publication as a rule making in the FEDERAL REGISTER. This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The term and phrases used in this Agreement, except the term “permit application package (PAP),” will be given the meanings set forth in SMCRA, 30 CFR Parts 700, 701, 740, and 761, and the State Program, including the State Act and the regulations promulgated pursuant to the State Act. Where there is a conflict between the above-referenced State and Federal definitions, the definitions used in the State Program will apply, unless otherwise required by Federal regulation.

The term “permit application package (PAP)” for the purposes of this Agreement, means a proposal to conduct surface coal mining and reclamation operations on Federal lands, including an application for a permit, permit revision, permit amendment, or permit renewal, and all information required by SMCRA, the Federal regulations, the State Program, this Agreement, and all other applicable laws and regulations, including, with respect to leased Federal coal,
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the Mineral Leasing Act of 1920 (MLA) and its implementing regulations.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the State Program are applicable to Federal lands in Montana except as otherwise stated in this Agreement, SMCRA, 30 CFR 740.4, 740.11(a), and 745.18 or other applicable Federal laws, Executive Orders, or regulations.

ARTICLE V: REQUIREMENTS FOR THE AGREEMENT

The Governor and the Secretary affirm that they will comply with all provisions of this Agreement.

A. Funds

1. The State shall devote adequate funds to the administration and enforcement on Federal lands in Montana of the requirements contained in the State Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as provided in section 705(c) of SMCRA and 30 CFR 735.16 for the costs associated with carrying out responsibilities under this Agreement. The amount of such funds shall be determined in accordance with the provisions of Chapter 3–10 and appendix 111 of the Federal Assistance Manual.

2. If DEQ applies for a grant but sufficient funds have not been appropriated to OSM, OSM and DEQ shall promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations on Federal lands in Montana are regulated in accordance with the State Program.

3. Funds provided to DEQ under this Agreement will be adjusted in accordance with the program income provisions of 43 CFR part 12.

B. Reports and Records

1. DEQ shall submit annual reports to OSM containing information with respect to its compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, DEQ and OSM shall exchange, except where prohibited by Federal or State law, information developed under this Agreement. OSM shall provide DEQ with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DEQ comments on the report will be attached before being sent to the Congress or other interested parties.

C. Personnel

DEQ shall maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA, the Federal lands program, and the State Program.

D. Equipment and Facilities

DEQ shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

E. Permit Application Fees and Civil Penalties

The amount of the fee accompanying the PAP shall be determined in accordance with section 82–4–223(1), of MCA, and the applicable provisions of Federal law. All permit fees and civil penalty fines shall be accounted for in accordance with the provisions of 43 CFR part 12. Permit fees will be considered program income. Civil penalties will not be considered program income. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include the amount of the permit application fees collected and attributable to Federal lands during the State fiscal year.

ARTICLE VI: REVIEW AND APPROVAL OF THE PAP OR APPLICATION FOR TRANSFER, ASSIGNMENT OR SALE OF PERMIT RIGHTS (TRANSFER APPLICATION)

A. Receipt and Distribution of the PAP or Transfer Application

1. DEQ shall require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands to submit to DEQ the appropriate number of copies of a PAP or transfer application. The PAP or transfer application shall meet the requirements of 30 CFR part 740, be in the form required by DEQ, and shall contain, at a minimum, the information required by 30 CFR 740.13(b), including:

a. Information necessary for DEQ to make a determination of compliance with the State Program;

b. Any supplement information required by OSM, the Bureau of Land Management (BLM), and the Federal Land Management Agency. This information shall be appropriate and adequate for OSM and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the MLA, as amended, the Federal lands program, and other Federal laws, Executive Orders, and regulations which these agencies administer.

2. Except as otherwise agreed in writing by Federal agencies, upon receipt of a PAP or transfer application, DEQ shall ensure that an appropriate number of copies of the PAP or transfer application are provided to OSM, Federal land management agency, and any other appropriate Federal agency.
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B. Review of the PAP or Transfer Application

1. DEQ is responsible for:
   a. As authorized by 30 CFR 740.4(c),
      (1) Being the primary point of contact with
          the applicant regarding the review of the
          PAP or transfer application and communications
          regarding decisions and determinations with respect to the PAP or transfer
          application;
      (2) Analysis, review, and approval, condition
          approval, or disapproval of the permit
          application component of the PAP or the
          transfer application for surface coal mining and reclamation operations on Federal
          lands in Montana.
   b. In addition, where a mining plan action
      (1) Consulting with and obtaining the con-
          sent, as necessary, of BLM pursuant to 30
          CFR 740.4(c)(2), with respect to post-mining land
          use and to any special requirements neces-
          sary to protect non-coal resources of the
          areas that will be affected by surface coal
          mining and reclamation operations;
      (2) Review and approval of exploration op-
          erations not subject to the requirements of
          43 CFR Group 3400, as provided in 30 CFR
          740.4(c)(6).
   c. In addition, where a mining plan action
      is required under 30 CFR part 746, as deter-
      mined by OSM:
      (1) Preparation of documentation to com-
          ply with the requirements of National Envi-
          ronmental Policy Act (NEPA). However,
          OSM will retain the responsibility for the ex-
          ceptions in 30 CFR 740.4(c)(7)(i) through (vii).
          DEQ and OSM shall coordinate and cooper-
          ate with each other so that, if possible, one
          Environmental Assessment or Environ-
          mental Impact Statement is produced to
          comply with NEPA and the Montana Envi-
          ronmental Policy Act (MEPA);
      (2) Preparation of a State decision pack-
          age, which includes written findings indi-
          cating that the permit application compo-
          nent of the PAP is in compliance with the
          terms of the State Program, a technical
          analysis of the PAP, and supporting docu-
          mentation.
   d. Reviewing and analyzing the PAP, to
      (1) Making determinations and evaluations
          for NEPA compliance documents as required
          by 30 CFR 740.4(c)(7)(i) through (vii);
      (2) Reviewing the appropriate portions of
          the PAP for compliance with the non-dele-
          gable responsibilities of the Secretary pursu-
          ant to SMCRA and 30 CFR 746.13, and for
          compliance with the requirements of other
          Federal laws, Executive Orders, and regula-
          tions;
   e. Providing technical assistance, if avail-
      (1) Consulting with the Federal land man-
          agement agency, and determining whether
          the PAP constitutes a mining plan modifica-
          tion under 30 CFR 746.18, and informing DEQ,
          whenever practical within 30 days of receiv-
          ing a copy of the PAP for operations on Fed-
          eral lands, of such determination;
      (2) Exercising its responsibilities in a timely
          manner governed, to the extent possible,
          by the deadlines established in the State
          Program;
      (3) Consulting with the Federal land man-
          agement agency, and determining whether
          the PAP constitutes a mining plan modifica-
          tion under 30 CFR 746.18, and informing DEQ,
          the applicant regarding the review of the
          PAP for compliance with the non-dele-
          gable responsibilities of the Secretary pursu-
          ant to SMCRA and 30 CFR 746.13, and for
          compliance with the requirements of other
          Federal laws, Executive Orders, and regula-
          tions;
      (4) Exercising its responsibilities in a timely
          manner governed, to the extent possible,
          by the deadlines established in the State
          Program;
      (5) Assisting DEQ, upon request, in carry-
          (a) Coordinating resolution of conflicts be-
              between DEQ and other Federal agencies in a
              timely manner;
          (b) Obtaining comments and findings of
              other Federal agencies with jurisdiction or respon-
              sibility over Federal lands;
          (c) Scheduling joint meetings between DEQ
              and Federal agencies;
          (d) Reviewing and analyzing the PAP, to
              (a) Coordinating resolution of conflicts be-
              between DEQ and other Federal agencies in a
              timely manner;
          (b) Obtaining comments and findings of
              other Federal agencies with jurisdiction or respon-
              sibility over Federal lands;
          (c) Scheduling joint meetings between DEQ
              and Federal agencies;
          (d) Reviewing and analyzing the PAP, to
              the extent possible, and providing to DEQ
              the work product within 50 days of receipt of
              the State’s request for such assistance, un-
              less a different time is agreed upon by OSM
              and DEQ; and
          (e) Providing technical assistance, if avail-
              able OSM resources allow.

b. In addition, where a mining plan action
   is required pursuant to 30 CFR part 746:
   (1) Consulting with and obtaining the con-
       c. In addition, where a mining plan action
      is required under 30 CFR part 746, as deter-
      mined by OSM:
      (1) Preparation of documentation to com-
      ply with the requirements of National Envi-
      ronmental Policy Act (NEPA). However,
      OSM will retain the responsibility for the ex-
      ceptions in 30 CFR 740.4(c)(7)(i) through (vii).
      DEQ and OSM shall coordinate and cooper-
      ate with each other so that, if possible, one
      Environmental Assessment or Environ-
      mental Impact Statement is produced to
appropriate, OSM will facilitate the attachment of conditions to the appropriate Federal authorizations; and

(3) Providing a decision document to the Secretary recommending approval, disapproval, or conditional approval of mining plans or modifications thereof.

3. The Secretary:
   a. Shall concurrently carry out his responsibilities that cannot be delegated to DEQ pursuant to SMCRA and 30 CFR 745.13, the Federal lands program, the MLA, NEPA, this Agreement, and other applicable Federal laws including, but not limited to, those listed in appendix A. The Secretary shall carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the State Program;
   b. Reserves the right to act independently of DEQ to carry out his responsibilities under laws other than SMCRA, and where Federal laws permit, to delegate some of the responsibilities to OSM; and
   c. Shall be responsible for approval, disapproval, or conditional approval of mining plans and modifications thereof with respect to lands containing leased Federal coal in accordance with 30 CFR 740.4(a)(1).

4. Coordination:
   a. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of a PAP or transfer application with respect to matters covered by the State Program.
   b. OSM and DEQ shall coordinate with each other during the review process of a PAP or transfer application as needed.
   c. OSM and DEQ may request and schedule meetings with the applicant with adequate advance notice to each other.
   d. DEQ shall keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies. DEQ shall send to OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP or transfer application. OSM shall send to DEQ copies of all OSM correspondence with the applicant and any other information received from the applicant which may have a bearing on the PAP or transfer application. Any conflicts or differences of opinions that may develop during the review process should be resolved at the lowest possible staff level.
   e. OSM shall have access to DEQ files concerning operations on Federal lands.
   f. Where a mining plan action is required pursuant to 30 CFR part 746, OSM and DEQ shall develop a work plan and schedule for the PAP review and each will designate a project leader. The project leaders will serve as the primary points of contact between OSM and DEQ throughout the review process. Not later than 30 days after receipt of the PAP, unless a different time is agreed upon, OSM shall furnish DEQ with its review comments on the PAP and specify any requirements for additional data. DEQ shall provide OSM all available information that may assist OSM in preparing any findings for the mining plan action.
   g. On matters centered exclusively with regulations under 43 CFR Group 3400, BLM will be the primary contact with the applicant and shall inform DEQ of its actions and provide DEQ with a copy of documentation on all decisions.

h. Responsibilities and decisions which can be delegated to DEQ under applicable Federal laws other than SMCRA may be specified in working agreements between OSM and DEQ, with the concurrence of any Federal agency involved, and without amendment to this Agreement.

i. In the case that valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect either a publicly-owned park, or a historic place listed in the National Register of Historic Sites, DEQ shall work, respectively, with the agency with jurisdiction over the publicly-owned park or the agency with jurisdiction over the historic place, to develop mutually acceptable terms and conditions for incorporation into the permit to mitigate adverse impacts.

C. Approval of the PAP or Transfer Application

1. DEQ shall make a decision on approval, conditional approval, or disapproval of the permit application component of the PAP or the transfer application on Federal lands.

2. DEQ must consider the comments of Federal agencies in the context of permit issuance and will document these comments in the record of permit decisions. To the extent allowed by Montana law, permits issued by DEQ will include terms and conditions imposed by the Federal land management agency pursuant to applicable Federal laws and regulations under 43 CFR Group 3400, BLM will be the primary contact with the applicant and Secretarial approval of the mining plan action must be obtained before the applicant may conduct surface coal mining and reclamation operations on the Federal lands. To the extent allowed by the
State law, DEQ shall reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

4. After making its decision on the permit application component of the PAP or transfer application, DEQ shall send a copy of the signed permit form and State decision document to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction over a publicly-owned park, or historic property included in the NRHS which would be adversely affected by the surface coal mining and reclamation operations.

ARTICLE VII: INSPECTIONS

A. DEQ shall conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the approved State Program.

B. DEQ shall, subsequent to conducting any inspection on Federal lands, file with OSM’s appropriate Field Office an inspection report describing: (1) the general conditions of the lands under the lease, permit, or license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance standards and reclamation requirements.

C. DEQ will be the point of contact and inspection authority in dealing with the operator concerning operations and compliance with requirements covered by this Agreement, except as described in this Agreement and in the Secretary’s regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

D. Authorized representatives of the Secretary may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843, and with the Secretary’s obligations under laws other than SMCRA.

E. OSM shall give DEQ reasonable notice of its intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When OSM is responding to a citizen complaint supplying adequate proof of an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it shall contact DEQ no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, must be referred initially to DEQ for action. The Secretary reserves the right to conduct inspections without prior notice to DEQ, if necessary, to carry out his responsibilities under SMCRA.

ARTICLE VIII: ENFORCEMENT

A. DEQ shall have primary enforcement authority under SMCRA concerning compliance with the requirements of this Agreement and the State Program in accordance with 30 CFR 740.4(c)(5) and 740.17(a)(2). Enforcement authority given to the Secretary under SMCRA, and its implementing regulations, or other Federal laws and Executive Orders, including, but not limited to, those listed in appendix A, is reserved to the Secretary.

B. During any joint inspection by OSM and DEQ, DEQ will have primary responsibility for enforcement procedures, including issuance of cessation orders and notices of violation. DEQ shall consult with OSM prior to issuance of any decision to suspend, rescind or revoke a permit on Federal lands. DEQ shall notify BLM of any suspension, rescission or revocation of a permit containing leased Federal coal pursuant to 30 CFR 740.13(f)(2).

C. During any inspection made solely by OSM or any joint inspection where DEQ an OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 842, 843, 845 and 846.

D. DEQ and OSM shall promptly notify each other of all violations and of all actions taken with respect to such violations.

E. Personnel of DEQ and OSM shall be mutually available to serve as witnesses in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary’s authority to enforce violations of Federal laws other than SMCRA.

ARTICLE IX: BONDS

A. DEQ and the Secretary shall require all operators on Federal lands to submit a single performance bond jointly payable to both the United States and DEQ. The bond shall be of sufficient amount to cover the operator’s responsibilities under SMCRA and the State Program. The bond shall be conditioned upon continued compliance with all requirements of SMCRA, 30 CFR Chapter VII, the State Program, and the permit. Such bond shall provide that if this Agreement is terminated under the provisions of 30 CFR 745.15, the portion of the bond covering the Federal lands shall be payable only to the United States.

B. DEQ will have primary responsibility for the approval and release of performance bonds required for surface coal mining and reclamation operations on Federal lands. However, release of a performance bond on

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lands subject to an approved mining plan requires the concurrence of OSM as provided in 30 CFR 740.15(d)(3). Prior to such concurrence, OSM shall coordinate with other Federal agencies having the authority over the lands involved. DEQ shall annually advice OSM of adjustments to the performance bond.

C. Performance bonds will be subject to forfeiture with the concurrence of OSM, in accordance with the procedures and requirements of the State Program. OSM may not withhold its concurrence unless DEQ’s forfeiture decision is not in accordance with the requirements and procedures of the State program.

D. Submission of a performance bond does not satisfy the requirements for either a Federal lease bond required by 43 CFR part 3474 or a lessee protection bond which is required in certain circumstances by section 715 of SMCRA.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING AND RECLAMATION OPERATIONS AND ACTIVITIES, AND VALID EXISTING RIGHTS AND COMPATIBILITY DETERMINATIONS

A. Unsuitability Petitions

1. Authority to designate or terminate the designation of areas of Federal lands as unsuitable for mining is reserved to the Secretary. Unsuitability petitions shall be filed with OSM and would be processed in accordance with 30 CFR 769.

2. When either DEQ or OSM receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of receipt of the petition and the anticipated schedule for reaching a decision. OSM shall coordinate with any agency with jurisdiction over the park or historic place. DEQ will determine, in consultation with the State Historic Preservation Officer, whether any proposed operation will adversely affect any publicly-owned park or historic place listed on the National Register of Historic Sites (NRHS).

Surface coal mining and reclamation operations of Federal lands protected under section 522(c)(3) of SMCRA may be permitted if approved jointly by DEQ, and the Federal, State, or local agency with jurisdiction over the park or historic place. DEQ will coordinate with such agency to develop mutually acceptable terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

4. DEQ will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining.

5. For operations on Federal lands, whenever DEQ is responsible for making the VER determinations, DEQ will consult with OSM and any affected agency.

ARTICLE XI: TERMINATION OF THE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF THE AGREEMENT

If this Agreement has been terminated in whole or part, it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENTS OF THE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. The Secretary or the State may, from time to time, revise and promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its respective laws or regulations or request necessary legislative action. Such changes will be made

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under the procedures of 30 CFR part 742 for changes to the State Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DEQ and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

A. DEQ and OSM shall, consistent with 30 CFR part 745, advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in the functions or duties of the principal offices of the program. DEQ and OSM shall advise each other in writing of changes in the location of their respective offices, addresses, telephone numbers, as well as changes in the names, addresses, and telephone numbers of their respective personnel.

B. Should the State Act be amended to transfer administration of the State Act to another agency, all references to DEQ in this Agreement shall be deemed to apply to the successor regulatory agency as of the date of the transfer. The provisions in this Agreement shall thereafter apply to that agency.

ARTICLE XVI: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under laws other than the Act and the State Program, including, but not limited to those listed in appendix A.

Approved:


Marc Racicot,
Governor of Montana.


Bruce Babbitt,
Secretary of the Interior.

APPENDIX A

15. Executive Order 11990 (May 24, 1977), for wetlands protection.
16. Executive Order 12898 (February 11, 1994) for Federal Actions to Address Environmental Justice on Minority Populations and Low Income Populations.
21. 30 CFR Chapter VII.
23. Montana Strip and Underground Mine Reclamation Act (MSUMRA), part 2, Chapter 4, Title 82, Montana Code Annotated.
24. Title 26, Chapter 4, Subchapter 3, Administrative Rules of Montana.

[63 FR 40794, July 30, 1998]