

bison" immediately after the word "cattle" both times it appears.

j. In the definition of *Permit for entry*, by adding the words "or bison" immediately after the word "cattle".

§ 78.1 Definitions.

* * * * *

Market cattle identification test cattle and bison. Cows and bulls 2 years of age or over that have been moved to recognized slaughtering establishments, and test-eligible cattle and bison that are subjected to an official test for the purposes of movement at farms, ranches, auction markets, stockyards, quarantined feedlots, or other assembly points. Such cattle and bison shall be identified by an official eartag and/or United States Department of Agriculture backtag prior to or at the first market, stockyard, quarantined feedlot, or slaughtering establishment they reach.

* * * * *

§ 78.40 [Amended]

3. In § 78.40, paragraph (c) would be amended by adding the words "and bison" immediately after the word "cattle".

§ 78.44 [Amended]

4. Section 78.44 would be amended as follows:

a. In paragraph (c), in paragraph (9) of the Agreement, by adding the words "and bison" immediately after the word "cattle".

b. In paragraph (c), in paragraph (10) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

c. In paragraph (c), in paragraph (11) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

d. In paragraph (c), in paragraph (12) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

e. In paragraph (c), in paragraph (13) of the Agreement, by adding the words "or bison" immediately after the word "cattle" both times it appears.

f. In paragraph (d), in paragraph (9) of the Agreement, by adding the words "and bison" immediately after the word "cattle".

g. In paragraph (d), in paragraph (10) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

h. In paragraph (d), in paragraph (11) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

i. In paragraph (d), in paragraph (12) of the Agreement, by adding the words "and bison" immediately after the words "of cattle"; by adding the words "or bison" immediately after the words "test-eligible cattle"; and by adding the words "or bison" immediately after the words "other cattle".

j. In paragraph (d), in paragraph (13) of the Agreement, by adding the words "or bison" immediately after the word "cattle" both times it appears.

Done in Washington, DC, this 7th day of January 1997.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-624 Filed 1-9-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Montana

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

ACTION: Proposed rule.

SUMMARY: The State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) are proposing to amend the cooperative agreement between the Department of the Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on Federal lands within Montana under the permanent regulatory program. The proposed rulemaking would streamline the permitting process in Montana by delegating to Montana the sole responsibility to issue permits for coal mining and reclamation operations on

Federal lands under the revised Federal lands program regulations, and would eliminate duplicative permitting requirements, thereby increasing governmental efficiency, which is one of the purposes of the cooperative agreement. This amendment would also update the cooperative agreement to reflect current regulations and agency structures. Cooperative agreements are provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice provides information on the proposed changes to the cooperative agreement.

DATES: *Written comments:* Written comments must be received by 4:00 p.m., M.S.T. on March 11, 1997.

Public hearing: Anyone wishing to testify at a public hearing must submit a request on or before 4:00 p.m., M.S.T. on January 31, 1997. Because OSM will hold a public hearing only if one is requested, hearing arrangements, dates and times, if any, will be announced in a subsequent Federal Register notice. If no one requests an opportunity to testify at the public hearing, the hearing will not be held. Any disabled individual who has need for special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, Suite 3320, 1999 Broadway, Denver, CO 80202-5733.

Copies of the Montana program, proposed amendments to the cooperative agreement and the related information required under 30 CFR Part 745 will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed revisions by contacting any one of the following persons.

Ranvir Singh, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202-5733, Telephone: (303) 844-1489.

Guy Padgett, Director, Casper Field Office, Office of Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 261-6550.

Jan Sensibaugh, Montana Department of Environmental Quality, 1520 East Sixth Avenue, Helena, MT 59620-0901, Telephone: (406) 444-5270.

FOR FURTHER INFORMATION CONTACT:

Ranvir Singh, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO, 80202-5733, Telephone: (303) 844-1489.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Cooperative Agreement

On June 4, 1980, the Governor submitted a request for a cooperative agreement between the Department of the Interior and the State of Montana to give the State primacy in the administration of its approved regulatory program on Federal lands within Montana. The Secretary approved the cooperative agreement on January 19, 1981 (46 FR 20983, April 8, 1981). The text of the existing cooperative agreement can be found at 30 CFR § 926.30.

On July 5, 1994, the Governor, pursuant to 30 CFR § 745.14 and at the recommendation of OSM, submitted a proposed modified cooperative agreement to address among other things, elimination of duplicative State/Federal permitting efforts and streamlining of the permitting processes. The proposed modifications would amend the existing cooperative agreement and delegate to Montana the sole responsibility to issue coal mining and reclamation permits on Federal lands consistent with the revised Federal lands regulations at 30 CFR Part 740 (48 FR 6912, February 16, 1983). This rulemaking would also amend the existing cooperative agreement to reflect current agency organizations.

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

II. Proposed Revisions to the Cooperative Agreement

A summary of the proposed changes to the existing cooperative agreement appears below. These proposed revisions are subject to further changes because of public comments and further discussions with Montana. The full text of the proposed revised cooperative agreement is being published for continuity, and the convenience of the reader.

The introductory language preceding existing Article I would be revised to read "(t)he 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:" This change would be made to assure language consistency with other State-Federal cooperative agreements, and to specify position designations of representatives of the two entities of the State and Federal governments that would sign the cooperative agreement. The second paragraph of the existing introductory language would be deleted because it would essentially duplicate the proposed language.

Existing Article I: Introduction and Purpose

Proposed Revised Article I: Authority, Purposes, and Responsible Agencies

The heading of existing Article I would be revised to read *Article I: Authority, Purposes, and Responsible Agencies*. This revision is proposed so that the revised heading correctly represent the three paragraphs that comprise this article as described below.

Authority

Existing paragraph A would be given the heading *A. Authority* to make it consistent with other cooperative agreements. The language in existing paragraph A would be revised to delegate to Montana the responsibility to review and approve coal exploration operations that are not subject to 43 CFR Group 3400. This change is in conformance with the Federal lands regulations at 30 CFR 740.4(c)(6).

Purposes

Existing paragraph B would be given the heading *B. Purposes*, and minor word changes would be made for clarity.

Responsible Agencies

A new paragraph *C. Responsible Agencies* would be added to replace and consolidate in one place the provisions of paragraphs A and B of existing

Article IV and would specify, as in the existing cooperative agreement, that the Office of Surface Mining Reclamation and Enforcement (OSM) would administer the cooperative agreement on behalf of the Secretary. However, since there has been a change in the name of the State agency with authority to regulate coal mining in Montana subsequent to the date of existing cooperative agreement, the Montana Department of Environmental Quality (DEQ), instead of the Montana Department of State Lands (State Lands), would administer the cooperative agreement on behalf of the Governor.

Existing Article II: Effective Date

Proposed Revised Article II: Effective Date

Existing Article II would be revised by replacing the roman numeral "X" at the end of the last sentence with roman numeral "XI" to correspond to the proposed renumbering of existing Article X. No change in effect is intended.

Existing Article XVI: Definitions

Proposed Revised Article III: Definitions

Existing Article XVI: Definitions would be renumbered to read *Article III: Definitions*. This change is proposed to assure that this article appears in the same sequence as in other State-Federal cooperative agreements. The existing language would be retained to provide that the terms and phrases used in the cooperative agreement would have the same meanings as they have in SMCRA, 30 CFR Parts 700, 701, 740, and the State Program. Additional language would be included to define the term "Permit Application Package (PAP)" to describe the material submitted by an applicant for a surface coal mining and reclamation operation permit on Federal lands (See 48 FR 6912, February 16, 1983). OSM adopted the term because there are requirements for mining on Federal lands that are in addition to those required by permit application under the State program for non-Federal lands. For example, operations on Federal lands may be subject to requirements of the Federal land management agency or of the Secretary under Federal laws other than SMCRA. The PAP would include such additional information as would be required by the State program. See definition of "permit application package" under 30 CFR 740.5.

The definition of PAP in the revised cooperative agreement includes the term "permit amendment" in addition to all other terms in the definition of PAP

under CFR 740.5. The term "permit amendment" under the Montana State Program means any change in the mine or reclamation plan that results in expansion or decrease of the operation's permitted boundaries, excluding incidental boundary changes (ARM 26.4.301(13)).

Existing Article III: Scope

Proposed Revised Article IV: Applicability

The heading of existing Article III would be revised to read *Article IV: Applicability*. This revision is proposed because the word "applicability" is more appropriate than the word "scope" to describe what is contained in this article. The new heading would also be consistent with that in other State-Federal cooperative agreements. Existing language would be revised to delete an obsolete reference to conditional approval of Montana's permanent State program, and to include additional current regulatory and statutory references that are relevant but are not presently included. These revisions would not change the intent of existing Article III.

Existing Article IV: Requirements for Cooperative Agreement

Proposed Revised Article V: Requirements for the Agreement

Existing Article IV would be renumbered and retitled to read *Article V: Requirements for the Agreement*. This as well as other proposed changes to Article IV are discussed below.

The change from the existing roman numeral IV to roman numeral V is being made to conform to the revised numbering of preceding articles. The word "agreement" would be used in place of phrase "cooperative agreement" to conform to the introductory paragraph of the Cooperative Agreement and is intended to be merely an editorial change.

As explained above, the provisions of existing paragraphs A and B have been consolidated into new paragraph C. *Responsible Agencies* of proposed Article I. The remaining provisions of existing Article IV would be reorganized into six paragraphs as explained below. The introductory language in the existing Article IV would be included without any substantive changes in paragraph A to affirm that the Governor and the Secretary would comply with all provisions of the Agreement.

Funds

Existing paragraph C. *Funds* would become paragraph B. *Funds* of proposed

Article V, and would consist of three proposed subparagraphs.

Proposed subparagraph 1 would retain all the language of the first two sentences of existing paragraph C. This subparagraph would also provide that the Federal Assistance Manual (FAM) would be used in determining the amount of grant funds to be reimbursed to DEQ. The existing cooperative agreement does not include this provision. Therefore, in order to comply with regulations at 30 CFR Part 735, reference to the use of FAM would be included to specify that the amount of reimbursement of DEQ for administration and enforcement on Federal lands is not limitless but is subject to the provisions of FAM.

Proposed subparagraph 2 contains a new provision to address the possibility when necessary funds referred to in subparagraph 1 may not be appropriated to OSM to reimburse the State. This new provision would describe the procedure to be used in dealing with the emergencies that may be caused by unavailability of sufficient Federal funds, and to insure that mining operations on Federal lands in Montana would be regulated in accordance with the State Program.

Proposed subparagraph 3 would be added to clarify that the amount of funds reimbursed to DEQ are not fixed but are subject to adjustments in accordance with the program income provisions of 43 CFR Part 12. This provision is added to comply with Financial Management requirements of 30 CFR 735.25.

Reports and Records

Existing paragraph D. *Reports and Records* would become paragraph C. *Reports and Records* of proposed Article V, and would be revised to make minor changes to improve clarity, and to remove reference to an OSM organizational structure that is no longer in use. As stated above OSM would administer the cooperative agreement on behalf of the Secretary, the word "Secretary" has been replaced by the acronym "OSM". A new provision has been added regarding the final evaluation report that OSM prepares and submits to the Congress and other interested parties about State administration and enforcement of the cooperative agreement. According to this provision OSM would be required to attach DEQ's comments on the report prior to its being submitted to the Congress and disseminated to other interested parties. This requirement would provide the Congress and the public an opportunity to know not only how OSM considers the State's

performance but also the State's views on its own performance.

Personnel

Existing paragraph E. *Personnel* would become paragraph D. *Personnel* of proposed Article V, and the existing language would be incorporated in the renumbered paragraph. No change in the meaning is intended.

Equipment and Facilities

Heading of the existing paragraph F. *Equipment and Laboratories* would be revised to read as E. *Equipment and Facilities*, to more appropriately describe the contents of this paragraph. The language in the existing paragraph would be retained without any substantive changes in its intent.

Permit Application Fees and Civil Penalties

Existing paragraph G. *Permit Application Fees* would be renumbered and retitled as paragraph F. *Permit Application Fees and Civil Penalties*. The change in title is to assure conformance with other cooperative agreements. The existing provision regarding all permit fees to be retained by the State and deposited in the General Fund would be deleted because it does not comply with revised Federal regulations. In order to comply with the Federal regulations regarding financial management, new language would be added to incorporate current regulatory references, and Federal and State program requirements with respect to civil penalties that are not included in the existing cooperative agreement.

Existing Article V: Policies and Procedures: Mine Plan Review

Proposed Revised Article VI: Review and Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

The number and heading of the existing *Article V: Policies and Procedures: Mine Plan Review* would be revised to read *Article VI: Review and Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights*. Renumbering is necessary to conform to revised numbering of preceding articles. The change in heading is proposed to accurately represent various topics that are parts of this article.

Provisions of existing Article V would be revised to be consistent with other cooperative agreements, to include additional requirements of the Federal lands program regulations at 30 CFR Parts 740, 745, and 746, to delete references to obsolete regulations, and to add references to current regulations.

The proposed Article VI would include all relevant provisions of existing Article V, and would consist of three major headings A, B, and C as described below.

Receipt and Distribution of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

The title of existing paragraph A would be revised to read *A. Receipt and Distribution of the PAP or Application for Transfer, Assignment or Sale of Permit Rights*. This change is proposed to assure consistency with the revised Federal lands regulations at 30 CFR 740.

Some of the provisions of existing paragraph A would be revised and incorporated in proposed subparagraph A.1. The existing requirement that the operator submit to the State and the Regional Director an appropriate number of identical copies of the mining and reclamation plan and permit application or an application for major modification to an approved mining plan and permit, would be replaced by the provision that the applicant submit to DEQ an appropriate number of copies of the PAP or application for transfer, assignment or sale of permit rights. This change is proposed to eliminate duplication and make DEQ the sole recipient of the permit applications. Other existing requirements with respect to the form and contents of the application to ascertain compliance with various State and Federal laws and regulations would be retained in subparagraph A.1 but would be revised to incorporate minor editorial changes and current statutory and regulatory citations.

A new subparagraph A.2 would be added to provide that after receipt of the PAP, or application for transfer, assignment or sale of permit rights, DEQ would ensure that an appropriate number of copies of the PAP or applicant for transfer, assignment or sale of permit rights, are provided to OSM, the Federal Land Management Agency, and any other appropriate Federal agency. This provision would further give DEQ the sole responsibility for distributing copies of permit applications to appropriate agencies, and would eliminate duplication of effort.

Review of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

The title of existing paragraph B. *Mine Plan Review Procedures* would be revised to read *B. Review of the PAP Application for Transfer, Assignment or Sale of Permit Rights*. This change is being proposed to assure clarity, and

consistency with Federal lands regulations at 30 CFR Part 740.

Most of the relevant provisions of existing paragraph B comprised of subparagraph 1 through 9 would be incorporated into four subparagraphs of the proposed paragraph B. However, in order to keep the various provisions in a logical sequence and under appropriate headings, the relevant language would be moved from the existing subparagraph to another proposed subparagraph. Also, the phrase "mine plan and permit application" extensively used in the existing cooperative agreement would be replaced by the phrase "permit application package (PAP) or application for transfer, assignment or sale of permit rights" to conform to the language in revised Federal regulations. Furthermore, the phrase "State Lands" would be replaced by Department of Environmental Quality (DEQ), and the "Regional Director" and "Secretary" would be replaced by "OSM", where appropriate. These modifications are proposed because of recent changes in the organizational structure of the Montana State government and OSM.

Responsibilities of DEQ, OSM and the Secretary

As described below, the proposed paragraph B would consist of four subparagraphs delineating the responsibilities of DEQ, OSM and the Secretary relating to the review of the PAP or application for transfer, assignment or sale of permit rights, and coordination procedures between DEQ and OSM before and after DEQ's approval of a permit.

The provision in existing paragraph B.1 that State Lands shall assume responsibility for the analysis and review of applications required by 30 CFR 741.13 for surface coal mining and reclamation permits on Federal lands in Montana, would be revised by deleting reference to an obsolete regulation at 30 CFR 741.13. The revised language would be moved, without any changes in its meaning, to proposed subparagraph B.1.a(2) in order to keep this provision in a logical sequence and under the appropriate subparagraph heading. The requirement in existing paragraph B.1 that the Secretary shall, as requested, assist the State through the Regional Director in the analysis and review of applications, would be changed to provide that OSM would review the appropriate portions of applications. The revised language would be moved and included as subparagraph a(2) of proposed paragraph B.2 where other responsibilities of OSM are described.

The remaining provision in existing paragraph B.1 stating that the Secretary shall, in addition, evaluate the State's analysis and conclusions as necessary to independently determine whether the Secretary concurs in the State's decision, would be deleted. Such Secretarial concurrence would be duplication of effort and hence, would not be necessary if, as proposed in this agreement (see proposed subparagraph C.1), DEQ assumes the responsibility to make a decision on approval, conditional approval, or disapproval of the permit application component of the PAP or application for transfer, assignment or sale of permit rights.

Thus, the proposed paragraph B.1 which describes the responsibilities of DEQ, would incorporate some of the provisions of existing paragraph B.1 as described above, also of existing paragraphs B.2, B.7 of Article V, and of paragraph B of existing Article VIII as discussed below. In addition, the following new requirements would be included in the proposed paragraph B.1. The first new requirement in proposed subparagraph B.1.a(3) would make DEQ responsible to obtain the requests from Federal agencies with jurisdiction or responsibility over Federal lands for additional information, comments and findings. This requirement is necessary to provide Federal agencies the full opportunity to communicate to DEQ their concerns and comments before DEQ approves a permit. The second new provision in proposed subparagraph B.1.a(4) would require DEQ to obtain OSM's determination whether or not the PAP involving leased Federal coal would require a mining plan modification under 30 CFR 746.18 and informing the applicant of such determination. This provision would ensure that the applicant, in addition to obtaining a DEQ permit, would also need to get a mining plan approval from the Secretary as required by the Mineral Leasing Act, and regulations at 30 CFR 746.11. Proposed subparagraph a(5) would require DEQ to consult with and obtain the consent, as necessary, of Federal land management agency with respect to post-mining land use and to any special requirements to protect non-coal resources. This new responsibility would be delegated to DEQ as provided in 30 CFR 740.4(c)(2). Proposed subparagraph a(6) would be added to delegate to DEQ the responsibility to consult with and obtain consent, as necessary, of the Bureau of Land Management (BLM) with respect to requirements relating to the development, production and recovery of mineral resources on lands that may

be affected by coal mining operations involving leased Federal coal, as authorized by 30 CFR 740.4(c)(3). Proposed subparagraph a(7) would provide for delegation to DEQ the responsibilities of approval and release of performance bonds with the concurrence of OSM, and approval and maintenance of liability insurance as authorized by 30 CFR 740.49(c)(4). Another new requirement in proposed subparagraph a(8) would delegate to DEQ the responsibility to review and approve exploration operations that are not subject to the requirements of 43 CFR Group 3400, as provided in 30 CFR 740.4(c)(6).

Proposed new subparagraph B.1.b(2) would require DEQ to prepare a State decision document in cases when a mining plan action would need to be taken by the Secretary. This decision document is one of the documents that comprises the mining plan decision document and serves the basis for OSM's recommendation to the Secretary for an action on a mining plan.

The provision in existing paragraph B.2 that State Lands will be the primary contact for operators regarding the processing of mining plans and permit applications, would be revised to make, in addition to those already mentioned, a number of corrections to conform to the current regulations. The word "applicant" would be used in place of the word "operators" to more accurately define the person submitting the PAP. The revised language would be moved to proposed subparagraph B.1.a(1) so that this provision is in a logical sequence and under the appropriate subparagraph heading without making any change in its intent.

The requirement of existing paragraph B.2 regarding State Lands being responsible for informing the applicant of all joint State-Federal determinations would be moved to the proposed paragraph C.4 of this article in order to keep this provision under the appropriate subject heading. However, the phrase "joint State-Federal determinations" would be deleted because DEQ would assume the primary responsibility to make determinations on approval or disapproval of permits.

The provision in existing paragraph B.2 requiring that State Lands shall send a copy of all correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the mine plan and permit application to the Regional Director, and the provision that requires OSM to send to the State a copy of all independent correspondence with the applicant that may have a bearing on decisions

regarding the mining plan and permit application, would be modified and moved to subparagraph B.4.d where coordination responsibilities of OSM and DEQ are described.

The provision in existing paragraph B.2 stating, "Except in exigent circumstances, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of plans and applications with respect to matters which are properly within the jurisdiction of State Lands", would be moved to proposed subparagraph B.4.a. No change in the meaning is intended.

The existing paragraph B.2 provides that the Secretary shall reserve the right to act independently of the State to carry out his responsibilities under laws other than the Federal Act and in instances of disagreement under the Federal Act, would be moved to subparagraph B.3.b where other responsibilities and rights of the Secretary are listed.

The proposed paragraph B.2, which describes the responsibilities of OSM, would incorporate the appropriate requirements of existing paragraphs B.1, B.4, B.5, B.7, and B.8. In addition, this paragraph would include four new provisions required by Federal regulations. The first new provision would be proposed subparagraph B.2.a(3), that would require OSM to consult with the Federal land management agency to determine whether the PAP constitutes a mining plan modification, and to inform DEQ of such determination within 30 days of receiving a copy of the PAP. This provision is required to comply with 30 CFR 746.18(c)(1). The second new provision, proposed subparagraph B.2.b(1), would be included to comply with the requirements of 30 CFR 746.13(e). Proposed subparagraph B.2.b(1) would require OSM to consult with and obtain the concurrences of BLM, and the Federal land management agency, or any other Federal agency, as necessary, prior to recommending to the Secretary to approve or disapprove the mining plan. The third new proposed subparagraph B.2.b(2) would address the situations that may arise when DEQ would be unable to include in the permit certain conditions that other Federal agencies may require to assure compliance with Federal laws other than SMCRA. In order to assure compliance with 30 CFR 740.13(c)(1), proposed paragraph C in subparagraph 2 would require DEQ to consider the comments of Federal agencies and, to the extent allowed by Montana law, include in the permit, terms and conditions imposed by the Federal law

management agency or any other Federal agency with any interest in the proposed project. Montana is concerned that 30 CFR 740.13(c)(1) appears to require the State to include and enforce conditions required by other Federal laws. The State has pointed out that it lacks the authority to enforce other Federal laws and regulations.

The proposed amendments to the Cooperative Agreement do not require nor authorize the State of Montana to enforce Federal laws other than SMCRA. However, the State will enforce its own permits, including those permit conditions required under 30 CFR 740.13(c)(1). The State must consider the comments of Federal agencies in the context of permit issuance and must document these comments in the record of permit decisions. After considering the comments and proposed conditions of Federal agencies, the State may adopt the recommended conditions. If the State does not incorporate a permit condition proposed pursuant to other Federal laws and regulations, the State will document why the condition was not accepted and transmit the documentation to OSM. OSM may agree with the State that the condition is not necessary. When OSM believes the proposed conditions are necessary, it has a variety of options to consider to improve those conditions:

(1) OSM may work with the Federal land management agency to find another means to resolve the issue.

(2) Those conditions associated with Federal laws other than SMCRA could be included as part of the mining plan approval, surface use permit, or other Federal authorization.

(3) In rare instances where no other Federal authorizations would be required, OSM will, after consulting with other Federal agencies as required by the Cooperative Agreement, issue a supplemental SMCRA permit attaching only those conditions which are necessary to assure compliance with other Federal laws. The State shall not be required to enforce the conditions of the Federal permit.

The fourth new proposed subparagraph B.2.b(3) would provide for OSM to be responsible for providing a mining plan decision document to the Secretary recommending approval, disapproval, or conditional approval of mining plans or modifications thereof. This new provision is needed to assure compliance with 30 CFR 740.4(b) and 746.13.

The gist of the first sentence of existing paragraph B.3 making the Regional Director responsible to ensure that any information OSM receives concerning the application is sent to

State Lands, would be contained in proposed subparagraph B.4.d where other coordination responsibilities of OSM and DEQ are described. The requirement of the second sentence of existing paragraph B.3 would be moved to proposed subparagraph B.4.b where other responsibilities of OSM and DEQ regarding coordination are described.

Proposed paragraph B.3, which delineates the responsibilities of the Secretary, in addition to incorporating in proposed subparagraph B.3.b the requirements of existing paragraph B.2 as discussed above, would also include two new subparagraphs. The first proposed subparagraph B.3.a would be added to provide for the Secretary to concurrently carry out the non-delegable responsibilities listed in 30 CFR 745.13. This is necessary to expedite the mining plan approval process such that the Secretary simultaneously carries out his responsibilities without waiting for the State to complete its actions. The second proposed subparagraph B.3.c would be added to implement 30 CFR 740.4(a) which requires the Secretary to be responsible for approval, disapproval, or conditional approval of a mining plan action pursuant to the Mineral Leasing Act of 1920.

The provision in existing paragraph B.4 making the Regional Director responsible for obtaining, on a timely basis, the views of all Federal agencies with jurisdiction or responsibility over a mine plan or permit application on Federal lands in Montana and for making these views known to State Lands, would be revised. The proposed amendments to the Agreement would delegate this responsibility to DEQ as provided in proposed subparagraphs B.1.a(3). This delegation is permissible under 30 CFR 740.4(c). But as provided in subparagraph B.2.a(5)(b), OSM may also assist DEQ, if requested, in obtaining comments and findings of other Federal agencies. Another provision in existing paragraph B.4 requiring State Lands to keep the Regional Director informed of findings during the review which bear on the responsibilities of other Federal agencies, would be included in proposed subparagraph B.4. after making appropriate modifications regarding the name of the State regulatory agency. Another provision of existing paragraph B.4 requiring the Regional Director to take appropriate steps to facilitate discussions between State Lands and the concerned agencies wherever desirable to resolve issues or problems, would be included in the proposed subparagraphs B.2a(5)(a) and B.2.a(5)(c), where other OSM

responsibilities are listed, without making any change in its meaning.

As discussed above and in the following paragraph B.5, the proposed paragraph B.4 would incorporate some of the provisions of existing paragraphs B.2, B.3, B.4, and B.5. In addition, five new subparagraphs would be added to comply with the Federal regulations that were promulgated subsequent to the date the existing Agreement became effective. The first proposed subparagraph B.4.c would provide for OSM and DEQ to coordinate with each other for scheduling a meeting with the applicant. This is necessary to enhance communications between the two agencies as they interact with the applicant, as well as to minimize duplication of communications with the applicant. The second proposed subparagraph B.4.e would be added to comply with the provisions of 30 CFR 745.12(g)(1) that requires DEQ to allow OSM access to files relating to coal mining operations on Federal lands. This is necessary to safeguard the interests of the Federal government. The third proposed subparagraph B.4.g would be added to ensure compliance with the provisions of 30 CFR 740.4 (c) and (d) relating to coordination between BLM and DEQ on matters relating to regulations at 43 CFR Group 3400. The fourth proposed subparagraph B.4.h would allow OSM and DEQ to develop working agreements specifying any delegable responsibilities of other Federal laws and regulations which may be delegated to DEQ without amendment to the Agreement. This provision recognizes that in the interest of reducing duplication in the review of permit application packages (PAPs), DEQ may assume certain responsibilities that are fully or partially delegable that would otherwise be performed by OSM. For example, a working agreement may specify how DEQ can assist the Secretary in meeting his responsibilities under the National Environmental Policy Act (NEPA). It is possible for DEQ to perform much of the basic research and analysis required for the Secretary to meet his NEPA responsibilities, although the Secretary will assume full responsibility for ensuring compliance with NEPA. Joint preparation of NEPA documents is an authorized means of achieving that compliance and is consistent with 30 CFR 740.4(c)(7). The fifth new provision in proposed subparagraph B.4.i provides that when valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of SMCRA and the proposed operation will adversely affect either a publicly-owned park or a

historic place listed on the National Register of Historic Places (NRHP), DEQ would work with the agency that has jurisdiction over the publicly-owned park, or with the agency that has jurisdiction over the historic place, to develop mutually acceptable terms and conditions for incorporation into the permit to mitigate adverse impacts.

In existing paragraph B.5, the Regional Director is required to begin a review of a mining plan and permit application for apparent completeness. As provided in 30 CFR 740.4(c)(1), this requirement would be revised to delegate the responsibility to DEQ and moved to proposed subparagraphs B.1.a(2) where other DEQ responsibilities are described, and to proposed subparagraph B.2.a(5)(d) OSM's responsibilities to assist DEQ are described. The provision in paragraph B.5 requiring State Lands to inform the Regional Director where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work, would be paraphrased and included in proposed subparagraph B.2.a(5)(e). The remaining provisions of existing paragraph B.5, would be modified to make editorial changes and would be included in proposed subparagraph B.4.f.

The requirements of existing paragraph B.6 providing for joint public meetings and hearings on permit decisions, would be deleted because all permit decisions would be made by DEQ under the amended cooperative agreement.

The requirements of existing paragraph B.7 relating to the preparation of an environmental impact statement and/or environmental assessment to comply with NEPA and the Montana Environmental Policy Act (MEPA) would remain the same and would be included in proposed subparagraph B.1.b(1) where all other responsibilities of DEQ are described. In addition, the gist of the last sentence of existing paragraph B.7 relating to independent evaluation and approval of a NEPA compliance documents would be included as proposed subparagraph B.2.a(1).

Existing paragraph B.8 would be revised significantly relating to the preparation of a technical analysis, environmental analysis, and proposed written decision on the mining plan and permit application review, independent evaluation of these documents, written concurrence by the Regional Director, and the requirement that "State Lands shall consider the comments of the Regional Director and send a final technical analysis, environmental analysis, and proposed decision to the

Regional Director for his written concurrence. The Regional Director shall have 30 days to act after receipt of State Lands' final technical analysis, environmental analysis, and proposed decision. If no further changes are required, the Regional Director shall proceed in accordance with 30 CFR 741.21." The regulation at 30 CFR 741.21(a)(2), and now superseded by current regulation, was promulgated on March 13, 1979 and required that "(t)he Director approve, or deny all applications for permits under the Federal lands program. . * . ." (44 FR 15335, March 13, 1979). In accordance with the Circuit Court of Appeals decision (*National Wildlife Federation vs. Donald Hodel*, 839 F.2d 694 (D.C. Cir. 1988)) that upheld OSM's 1983 Federal program regulations (48 FR 6936, February 16, 1983), OSM is not required to issue permits under the Federal lands program in States that have a State-Federal cooperative agreement. However, due to the above language in paragraph B.8 of existing Article V, OSM has continued to issue Federal permits in Montana under the Federal lands program. It is the intent of these proposed amendments that OSM would not issue Federal permits in Montana under the Federal lands program.

Therefore, in accordance with regulations at 30 CFR 740.4(c)(1), OSM would delegate to DEQ the responsibility to make a decision on approval, disapproval, or conditional approval of the permit application component of the PAP as provided in proposed paragraph C.1 of Article VI. The existing requirement that "the Regional Director shall have 30 days to act after receipt of State Lands' final technical analysis, environmental analysis, and proposed decision", has been included in proposed subparagraph B.2.a(4) after making two modifications. First, the existing requirement for "the Regional Director to act on State Lands' technical analysis, environmental analysis and proposed decision" has been replaced by the catchall phrase "exercising its responsibilities". Two, the "30-day" time limit has been replaced by the phrase "timely manner governed, to the extent possible, by the deadlines established in the State Program". As stated above DEQ would have the responsibility to make a decision on approval, disapproval, or conditional approval of the permit application component of the PAP, and OSM would not need to act on DEQ's final technical analysis, environmental analysis, and proposed decision. Further, due to

dwindling staff resources adherence to strict time limits could be very difficult.

The provisions in existing paragraph B.9 refer to sections of obsolete regulations at 30 CFR 741.16, 741.17 and 741.21, and hence would be deleted.

Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

Proposed paragraph C would be titled *Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights*. As discussed earlier subparagraph C.1 would provide that DEQ shall make a decision on approval, conditional approval or disapproval of the permit application component of the PAP or application for transfer, assignment or sale of permit rights on Federal lands as authorized by 30 CFR 740.4(c)(1). Proposed subparagraph C.2 would require DEQ to consider the comments of the Federal agencies and, to the extent allowed by the State Act, incorporate in the permit any terms or conditions imposed by the Federal land management agency pursuant to applicable Federal laws and regulations as required by 30 CFR 740.13(c)(1). Proposed subparagraph C.3 would provide that when a mining plan is required to be approved by the Secretary, DEQ may make a decision on the permit application component of the PAP on Federal lands prior to the necessary Secretarial decision on the mining plan, provided that DEQ advises the applicant that Secretarial approval of the mining plan must be obtained before the applicant may conduct surface coal mining and reclamation operations on the Federal lands. This provision would serve two purposes. One, it would enable DEQ to issue a State permit within time limits dictated by the State program, and two, it would inform the applicant that a mining plan approval from the Secretary must be obtained, when necessary, prior to commencing certain coal mining operations. Finally, to bring the permitting process to conclusion and close the communication loop, proposed subparagraph C.4 would require that after DEQ has made a decision on the permit application component of the PAP, DEQ shall send a copy of the signed permit form and State decision document to the applicant, OSM, the Federal land management agency and, when necessary, to the agency with jurisdiction over a publicly-owned park or historic property listed in the NRHP that would be adversely affected by the surface coal mining and reclamation operations.

Existing Article VI: Inspections

Proposed Revised Article VII: Inspections

This article would be renumbered as *Article VII: Inspections* to correspond to the revised numbering of preceding articles. Existing paragraphs A, B, C, D, and E would be reorganized and revised to delete references to OSM's organizational structure that is no longer in use, and obsolete regulations. In order to increase clarity, existing paragraph F would be moved under proposed *Article VIII: Enforcement* to become paragraph E. No change in the meaning is intended.

Existing Article VII: Enforcement

Proposed Revised Article VIII: Enforcement

This article would be renumbered as *Article VIII: Enforcement* to correspond to the revised numbering of preceding articles. Changes in the language are for clarification purposes only, and also to ensure consistency with other cooperative agreements.

Existing paragraph A would be revised to include references to 30 CFR Part 740, to replace "State Lands" with "DEQ", and to add that enforcement authority given to the Secretary under other Federal laws and Executive Orders, including but not limited to those listed in Appendix A, is reserved to the Secretary. No change in its meaning is intended.

Existing paragraph B would essentially remain the same except for few word changes for clarification purposes.

In order to comply with revised Federal regulations a new paragraph C would be added to provide that during any inspection made solely by OSM or during any joint inspection where DEQ and 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.

Existing paragraph C would be renumbered D but would retain the same provisions. As mentioned above a proposed paragraph E would be added to incorporate the language of existing paragraph F of *Article VI: Inspections*.

Existing paragraph D would be renumbered F, without making any change in its meaning.

Existing Article VIII: Bonds

Proposed Revised Article IX: Bonds

This article would be renumbered as *Article IX: Bonds* to correspond to the revised numbering of preceding articles.

Existing paragraph A would be revised to delete reference to the Regional Director because of organizational changes in OSM. Addition of the new word "performance" in front of the word "bond" is necessary to conform to the regulatory language. The phrase "jointly payable to both the United States and DEQ", and the sentence "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" would be added to ensure conformance with the provisions of Federal lands program regulations at 30 CFR 740.15(b).

Existing paragraph B would be expanded to provide DEQ with the primary responsibility for approval and release of performance bonds. The revised paragraph B would require OSM concurrence in the release by DEQ of a performance bond on lands subject to an approved mining plan. However, prior to such concurrence, OSM shall coordinate with other Federal agencies that have authority over the lands involved. This requirement would ensure the protection of interests of all Federal agencies. DEQ would also be required to annually advise OSM of adjustments to the performance bond as provided in the existing paragraph B.

Proposed paragraph C would be added to safeguard the interests of the U.S. government, and provide that performance bonds will be subject to forfeiture with the concurrence of OSM, in conformance with the requirement of the State program, and OSM may not withhold its concurrence unless DEQ's forfeiture decision is not in accordance with the requirements and procedures of the State program.

Proposed paragraph D would be added to ensure consistency with other cooperative agreements. This paragraph would seek to remind the applicant, OSM, and DEQ that submission of a performance bond does not satisfy the requirements of a Federal lease bond required by 43 CFR 3474, or the requirements of a Federal lessee protection bond pursuant to section 715 of SMCRA. Distinct from the performance bond, the Federal lease bond, made payable to the United States through BLM, is required to be posted by the applicant for a coal lease to assure compliance with the terms and conditions of a Federal coal lease, whereas the Federal lessee protection bond, made payable to the United States or the State, whichever is applicable, is required to be posted by the applicant for a coal mine and reclamation permit

for use and benefit of a permittee or lessee of surface lands to secure payment of any damages to crops or tangible improvements on Federal lands.

Existing Article IX: Designation of Lands as Unsuitable

Proposed Revised 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

This article would be renumbered and retitled as *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*. The change in numbering would ensure conformance with the revised numbering of preceding articles. The change in article heading would reflect expansion in the subject matter to incorporate regulatory requirements that have been promulgated over the years since the execution of the existing cooperative agreement. Proposed article X would consist of two paragraphs.

Unsuitability Petitions

Existing paragraph A would be redesignated *A. Unsuitability Petitions*, and would include two proposed subparagraphs.

Proposed subparagraph A.1 would include the opening language from existing paragraph B stating that the authority to designate Federal lands as unsuitable for mining, would be reserved to the Secretary. The language in the second sentence of existing paragraph B would be modified and included in proposed subparagraph A.1. The modified language would state that unsuitability petitions would be filed with OSM and would be processed in accordance with 30 CFR 769.

Proposed subparagraph A.2 would include the existing requirements of paragraph A regarding cooperation between OSM and DEQ in processing petitions to designate lands as unsuitable for mining. During processing of such petitions, OSM would also be required to coordinate with, and solicit comments from the appropriate Federal land management agency.

Valid Existing Rights (VER) and Compatibility Determinations

Existing paragraph B would be redesignated *B. Valid Existing Rights (VER) and Compatibility Determinations*.

As stated above the provisions of existing paragraph B would be incorporated in subparagraph A.1. Proposed paragraph B would include five proposed subparagraphs that would describe roles and responsibilities of OSM and DEQ in VER and compatibility determinations for coal mining operations pursuant to the requirements of section 522(e) of SMCRA.

Proposed subparagraph B.1 would provide that the Secretary will make the VER determination for Federal lands within the boundaries of areas specified under section 522(e)(1) of SMCRA. For coal mining operations conducted both on Federal and non-Federal lands, the Secretary will make the VER determinations for the Federal lands and DEQ will make such determinations for the State and private lands.

Subparagraph B.2 would provide that the Secretary will make VER determinations for Federal lands within the boundaries of any area specified in section 522(e)(2), and OSM will process requests for determination of compatibility for these areas.

Subparagraph B.3 would provide that DEQ will make the VER determination for the publicly-owned park or places included in the National Register of Historic Places (NRHP) protected under section 522(e)(3) of SMCRA; DEQ will consult with the State Historic Preservation Officer to determine if the proposed operation will adversely affect any publicly-owned park or place listed on the NRHP. This subparagraph would also provide that surface coal mining and reclamation operations may be permitted on Federal lands protected under section 522(e)(3) of SMCRA if jointly approved by DEQ, and the Federal, State, or local agency with jurisdiction over the publicly-owned park or the historic place, and DEQ will coordinate with these agencies for developing mutually acceptable permit conditions to mitigate environmental impacts on such park and place.

Subparagraph B.4 would provide that DEQ will make the VER determination, on Federal lands for all areas specified in section 522(e) (4) and (5) of SMCRA as unsuitable for mining.

Subparagraph B.5 summarizes that whenever DEQ will make VER determinations for Federal lands, DEQ will consult with OSM and the appropriate Federal agency.

Existing Articles X through XII would be renumbered as proposed Articles XI through XIII. The word "cooperative" before the word "agreement", however, would be deleted from the heading of each Article in conformance with the introductory language preceding Article I. No substantive changes are proposed.

Existing Article XIII: Changes in State or Federal Standards

Proposed Revised Article XIV: Changes in State or Federal Standards

Article XIII would be renumbered to read *Article XIV: Changes in State or Federal Standards*. It would include two paragraphs that would include revisions in existing language to increase clarity and to add relevant statutory and regulatory cites.

Existing Article XIV: Changes in Personnel and Organization

Proposed Revised Article XV: Changes in Personnel and Organization

Article XIV would be renumbered to read: *Article XV: Changes in Personnel and Organization*. Paragraph A of this Article would include the language of existing Article XIV but would be revised to make minor editorial changes to increase clarity. The new paragraph B would be added to obviate the need for changes to this agreement in the event of any changes in the State Act that may transfer administration of this Agreement to another State agency. In that event, all references to DEQ in this agreement would apply to that agency.

Existing Article XV: Reservation of Rights

Proposed Revised Article XVI: Reservation of Rights

Article XV would be renumbered to read: *Article XVI: Reservation of Rights*. Existing language would be revised to make minor editorial changes to delete references to several statutes without changing its meaning.

Article XVI: Definitions would be renumbered as proposed *Article III: Definitions* and would be revised to include additional 30 CFR references.

III. Procedural Determinations

1. *Executive Order 12866*

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

2. *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of

SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. *Paperwork Reduction Act*

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

5. *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule would amend the cooperative agreement between the Department of the Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on Federal lands within Montana under the permanent regulatory program. The proposed rulemaking would streamline the permitting process in Montana by delegating to Montana the sole responsibility to issue permits for coal mining and reclamation operations on Federal lands under the Federal lands program regulations, and would eliminate duplicative permitting requirements, thereby increasing governmental efficiency, which is one of the purposes of the cooperative agreement. This amendment would also update the cooperative agreement to reflect current regulations and agency structures.

6. *Unfunded Mandates*

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

7. *Author*

The principal author of these proposed regulations is Ranvir Singh, P.E., Western Regional Coordinating Center, 1999 Broadway, Suite 3320, Denver, CO 80202-5733.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 3, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 926 is proposed to be amended as follows:

PART 926—[AMENDED]

1. The authority citation for Part 926 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Public Law 95-87.

2. Section 926.30 is revised to read as follows:

§ 926.30 State-Federal 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 operations¹ 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

¹ The term "Exploration operations" is referred to as "Prospecting" in the Montana State Program.

application of the State Program on all non-Indian lands in Montana.

C. Responsible Agencies

The Montana Department of Environmental Quality (DEQ) has, and shall continue to have, authority under State law to 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 rule making in the Federal Register].² This Agreement shall remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms 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 cooperative 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, the Mineral Leasing Act 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 745.13 or other applicable Federal laws, Executive Orders, or regulations.

Article V: Requirements for the Agreement

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

B. 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.

C. Reports and Records

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.

D. 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.

E. 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.

F. Permit Application Fees and Civil Penalties

The amount of the fee accompanying an application for a permit to conduct surface coal mining and reclamation operations on Federal lands in Montana 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 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

A. Receipt and Distribution of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

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 application for transfer, assignment or sale of permit rights. The PAP or application for transfer, assignment or sale of permit rights shall meet the requirements of 30 CFR Part 740, shall 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 supplemental 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 Mineral Leasing Act (MLA) of 1920, 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 application for transfer, assignment or sale of permit rights, DEQ shall ensure that an appropriate number of copies of the PAP or application for transfer, assignment or sale of permit rights are provided to OSM, the Federal land management agency, and any other appropriate Federal agency.

B. Review of the PAP or Application for Transfer, Assignment or Sale of Permit Rights

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 application for transfer, assignment or sale of permit rights and communications regarding all decisions and determinations with respect to the PAP or application for transfer, assignment or sale of permit rights;

(2) Analysis, review, and approval, conditional approval, or disapproval of the permit application component of the PAP or application for transfer, assignment or sale of permit rights for surface coal mining and reclamation operations on Federal lands in Montana;

(3) Obtaining the comments and findings of Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP or application for transfer, assignment or sale of permit rights, unless otherwise agreed in writing by Federal agencies. DEQ shall request such Federal agencies to provide to DEQ their requests for additional information or their findings within 45 days of the receipt of the request;

(4) Obtaining OSM's determination whether the PAP involving leased Federal coal constitutes a mining plan modification under 30 CFR 746.18, and informing the applicant of such determination;

(5) Consulting with and obtaining the consent, as necessary, of the Federal land management agency pursuant to 30 CFR 740.4(c)(2), with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas that will be affected by surface coal mining and reclamation operations;

(6) Consulting with and obtaining the consent, as necessary, of BLM pursuant to 30

² See explanation in Article II at 46 FR 20983, April 8, 1981.

CFR 740.4(c)(3), with respect to requirements relating to the development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations involving leased Federal coal pursuant to 43 CFR Group 3400;

(7) Approval and release of performance bonds pursuant to Article IX.B, and approval and maintenance of liability insurance;

(8) Review and approval of exploration operations not subject to the requirements of 43 CFR Group 3400, as provided in 30 CFR 740.4(c)(6).

b. In addition, where a mining plan action is required under 30 CFR Part 746, as determined by OSM:

(1) Preparation of documentation to comply with the requirements of the National Environmental Policy Act (NEPA). However, OSM will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i) through (vii). DEQ and OSM shall coordinate and cooperate with each other so that, if possible, one Environmental Assessment or Environmental Impact Statement is produced to comply with NEPA and the Montana Environmental Policy Act (MEPA);

(2) Preparation of a State decision package, which includes written findings indicating that permit application component of the PAP is in compliance with the terms of the State Program, a technical analysis of the PAP, and supporting documentation.

2. OSM is responsible for:

a. When the PAP includes Federal lands,

(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-delegable responsibilities of the Secretary pursuant to SMCRA and 30 CFR 745.13, and for compliance with the requirements of other Federal laws, Executive Orders, and regulations;

(3) Consulting with the Federal land management agency, and determining whether the PAP constitutes a mining plan modification under 30 CFR 746.18, and informing DEQ, whenever practical within 30 days of receiving a copy of the PAP for operations on Federal lands, of such determination;

(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 carrying out its responsibilities by:

(a) Coordinating resolution of conflicts between DEQ and other Federal agencies in a timely manner;

(b) Obtaining comments and findings of other Federal agencies with jurisdiction or responsibility 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, unless a different time is agreed upon by OSM and DEQ; and

(e) Providing technical assistance, if available 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 concurrences of BLM, the Federal land management agency, and any other Federal agency, as necessary, prior to making recommendation to the Secretary concerning approval of the mining plan;

(2) Upon notification from the DEQ that certain permit conditions required by the Federal land management agency are not incorporated in the State permit, OSM will determine whether such conditions are necessary. When OSM believes the conditions are necessary, OSM will work with the Federal land management agency to find another means to resolve the issue and, where 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 Mineral Leasing Act (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 law permits, 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 application for transfer, assignment or sale of permit rights 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 application for transfer, assignment or sale of permit rights 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 application for transfer, assignment or sale of permit rights. 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 application for transfer, assignment or sale of permit rights. 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 50 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 concerned 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 NRHP, 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 Application for Transfer, Assignment or Sale of Permit Rights

1. DEQ shall make a decision on approval, conditional approval, or disapproval of permit application component of the PAP or application for transfer, assignment or sale of permit rights 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 other than SMCRA, in accordance with 30 CFR 740.13(c)(1). When Federal agencies recommend permit conditions and these conditions are not adopted by DEQ, DEQ will provide OSM with documentation as to why they were not incorporated as permit conditions.

3. When a mining plan action is required pursuant to 30 CFR part 746, DEQ may make a decision on approval, conditional approval, or disapproval of permit application component of the PAP on Federal lands in accordance with the State Program prior to the necessary Secretarial decision on the mining plan, provided that DEQ advises the applicant that 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, 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 National Register of Historic Places (NRHP) 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 and 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 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 advise 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 and solicit comments from the applicable Federal land management agency. OSM and DEQ shall fully consider data, information, and recommendations of all agencies.

B. Valid Existing Rights (VER) and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA, or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA are received:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, Secretary will make the VER determination. If surface coal mining and reclamation operations would be conducted on both Federal and non-Federal lands within such areas, the Secretary will make the VER determination for the Federal lands and DEQ will make the VER determination for State and private lands.

2. For Federal lands within the boundaries of any national forest where proposed surface coal mining and reclamation operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), the Secretary will make VER determinations. OSM will process requests for determinations of compatibility under section 522(e)(2) of SMCRA and part 30 CFR 761.12(c).

3. Where a VER determination is requested for Federal lands protected under section 522(e)(3), DEQ will make the VER determination. DEQ will determine, in consultation with the State Historic Preservation Officer, whether any proposed operation will adversely affect any publicly-owned park or place listed on the NRHP.

Surface coal mining and reclamation operations of Federal lands protected under section 522(e)(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 any agency with jurisdiction over the publicly-owned park or historic place 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 determines it 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 under the procedures of 30 CFR Part 732 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 key personnel, including the head of a department or division, or 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 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.

Dated:

Governor of Montana

Dated:

Secretary of the Interior

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 et seq., and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 et seq., and implementing regulations, including 43 CFR Part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and implementing regulations, including 40 CFR Part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 et seq., and implementing regulations, including 50 CFR Part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., and implementing regulations, including 36 CFR Part 800.
6. Native American Graves Protection and Repatriation Act, 25 U.S.C. §§3001 et seq.
7. The American Indian Religious Freedom Act, 42 U.S.C. 1986 et seq.
8. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa et seq.
9. The Clean Air Act, 42 U.S.C. 7401 et seq., and implementing regulations.
10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and implementing regulations.
11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., and implementing regulations.
12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 et seq.
13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
14. Executive Order 11988 (May 24, 1977), for flood plain protection.
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.
17. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 et seq., and implementing regulations.
18. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 et seq.
19. The Constitution of the United States.
20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.
21. 30 CFR Chapter VII.
22. The Constitution of the State of Montana.
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.

25. Montana Environmental Policy Act (MEPA).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-5674-4]

Calls for State Implementation Plan Revisions for Certain States To Reduce Regional Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: In accordance with section 110(k)(5) and 110(a)(2)(D) of the Clean Air Act (Act), the EPA plans to require States to submit State implementation plan (SIP) measures to ensure that emission reductions are achieved as needed to prevent significant transport of ozone (smog) pollution across State boundaries in the Eastern United States. These precursors include volatile organic compounds (VOC) and oxides of nitrogen (NO_x).

Today's notice announces the Agency's intention to publish a Notice of Proposed Rulemaking in the March 1997 timeframe, with final action scheduled for summer 1997. Ozone has long been recognized, in both clinical and epidemiological research, to affect public health. There is a wide range of ozone-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), inflammation of the lung, and possible long-term damage to the lungs. Today's notice announces EPA's intention to conduct the formal process for implementing the regional reductions in ozone precursors that are necessary for areas in the Eastern United States to reach attainment. The Ozone Transport Assessment Group (OTAG) was established approximately 1½ years ago to undertake an assessment of the regional transport problem. The OTAG is a collaborative process conducted by the affected States. The OTAG also includes representatives from EPA and interested members of the public, including environmental groups and industry, to evaluate the ozone transport problem and the development of solutions.