

submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

#### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Missouri program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Missouri program has no effect on Federally-recognized Indian tribes.

#### *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 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)).

#### *Paperwork Reduction Act*

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

#### *Regulatory Flexibility Act*

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

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector

of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### **List of Subjects in 30 CFR Part 925**

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 18, 2005.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Region.*

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## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 926**

**[MT-025-FOR]**

#### **Montana Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the “Montana program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposes revisions to, additions of, and deletions of rules about: Definitions; permit application requirements; application processing and public participation; application review, findings, and issuance; permit conditions; permit renewal; performance standards; prospecting permits and notices of intent; bonding and insurance; protection of parks and historic sites; lands where mining is prohibited; inspection and enforcement; civil penalties; small operator assistance program (SOAP); restrictions on employee financial interests; blasters license; and revision of permits.

Montana intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, and to clarify ambiguities.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we

will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.s.t. December 29, 2005. If requested, we will hold a public hearing on the amendment on December 27, 2005. We will accept requests to speak until 4 p.m., m.s.t. on December 14, 2005.

**ADDRESSES:** You may submit comments, identified by "MT-025-FOR," by any of the following methods:

- E-mail: [rbuckley@osmre.gov](mailto:rbuckley@osmre.gov).

Include "MT-025-FOR" in the subject line of the message.

- Mail, Hand Delivery/Courier: Richard Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601-1018, (307) 261-6550.

- Fax: (307) 261-6552.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and the identifier "MT-025-FOR." For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** Access to the docket, to review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (OSM) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Richard Buckley, Acting Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601-1018, (307) 261-6550, [rbuckley@osmre.gov](mailto:rbuckley@osmre.gov).

Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, (406) 444-2544, [neharrington@mt.gov](mailto:neharrington@mt.gov).

**FOR FURTHER INFORMATION CONTACT:**

Richard Buckley, Telephone: (307) 261-6550. E-mail: [rbuckley@osmre.gov](mailto:rbuckley@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Montana Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determination

**I. Background on the Montana Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980; **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

**II. Description of the Proposed Amendment**

By letter dated August 29, 2005, Montana sent us a proposed amendment to its program (MT-025-FOR, Administrative Record No. MT-22-1) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to legislative revisions to its statutes, to the required program amendments at 30 CFR 926.16(e)(1), (k), (l), and (m), and to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

The provisions of the Administrative Rules of Montana (ARM) that Montana proposes to revise, delete, and/or add are: ARM 17.24.301, definitions; 17.24.302, permit application format; 17.24.303, application requirements for legal, financial, and compliance information; 17.24.306, application requirements for baseline environmental information; 17.24.305, permit application map requirements; 17.24.306, prime farmland investigation; 17.24.308, operations plan; 17.24.312, fish and wildlife plan; 17.24.313, reclamation plan; 17.24.315, plans for ponds and embankments; 17.24.321, transportation facilities plan; 17.24.322, geologic information and coal

conservation; 17.24.323, grazing plan; 17.24.324, prime farmland special application requirements; 17.24.401, application filing and notice; 17.24.404, application review; 17.24.405, findings and decision; 17.24.412, extension of time to commence mining; 17.24.413, permit conditions; 17.24.416, permit renewal; 17.24.427, change of contractor; 17.24.501, backfilling and grading; 17.24.515, highwall reduction; 17.24.520, thick overburden and excess spoil; 17.24.522, permanent cessation of operations; 17.24.523, coal fires and coal conservation; 17.24.602, location of roads and railroads; 17.24.603, road and railroad embankments; 17.24.605, hydrologic impact of roads and railroads; 17.24.609, other support facilities; 17.24.623, blasting schedule; 17.24.624, surface blasting requirements; 17.24.626, blasting records; 17.24.633, water quality performance standards; 17.24.634, reclamation of drainage basins; 17.24.635, diversions; 17.24.636, temporary diversions; 17.24.638, sediment control; 17.24.639, sediment ponds and other treatment facilities; 17.24.642, permanent impoundments; 17.24.645, ground water monitoring; 17.24.646, surface water monitoring; 17.24.701, soil removal; 17.24.702, soil storage and redistribution; 17.24.703, soil substitutes; 17.24.711, revegetation establishment; 17.24.714, soil stabilization; 17.24.716, revegetation methods; 17.24.717, tree and shrub planting; 17.24.718, soil amendments and land use practices; 17.24.719, grazing; 17.24.720, revegetation inspections; 17.24.723, revegetation monitoring; 17.24.724, revegetation success standards; 17.24.725, responsibility period; 17.24.726, vegetation measurement; 17.24.730, seasonality; 17.24.732, revegetation of previously cropped areas; 17.24.733, measurement of trees and shrubs; 17.24.751, fish and wildlife protection; 17.24.761, air quality protection; 17.24.762, postmining land use; 17.24.764, cropland; 17.24.815, prime farmland revegetation; 17.24.821, alternate reclamation—alternative postmining land use, plans; 17.24.823, alternate reclamation—alternative postmining lands use, approval of plan; 17.24.824, alternate reclamation and alternative postmining land use; 17.24.825, alternate reclamation, alternate revegetation; 17.24.826, alternate reclamation, liability period; 17.24.832, auger mining; 17.24.901, underground mining application requirements; 17.24.903, underground mining performance standards; 17.24.911, subsidence control;

17.24.924, underground development waste, general; 17.24.927, durable rock fills; 17.24.930, coal processing waste; 17.24.932, disposal of coal processing waste; 17.24.1001, prospecting permit application; 17.24.1002, prospecting monthly reports; 17.24.1003, renewal and transfer of prospecting permits; 17.24.1017, bond release for drilling operations; 17.24.1018, notice of intent to prospect; 17.24.1104, bonding amounts; 17.24.1106, bond terms and conditions; 17.24.1108, certificates of deposit; 17.24.1109, letters of credit; 17.24.1116, bond release; 17.24.1125, liability insurance; 17.24.1129, annual report; 17.24.1131, protection of parks and historic sites; 17.24.1132, lands prohibited, definitions and standards; 17.24.1133, lands prohibited, procedures; 17.24.1201, inspections; 17.24.1202, compliance reviews; 17.24.1206, enforcement; 17.24.1211, civil penalties; 17.24.1212, civil penalty point system; 17.24.1219, individual civil penalties; 17.24.1225, small operator assistance program (SOAP); 17.24.1226, SOAP providers; 17.24.1250, restrictions on employee financial interests; 17.24.1255, multiple interest advisory boards; 17.24.1263, revocation or suspension of blasters license; and 17.24.1301, revision of existing permits.

Specifically, Montana proposes to the following revisions to its rules, all contained within the Administrative Rules of Montana (ARM). We note that in many but not all cases, Montana has proposed changing the numbering scheme for sub-requirements within the revised rules.

#### 17.24.301, Definitions

(6) “adjacent area” proposed to be revised by deleting the existing definition and incorporating the statutory definition at 82–4–203(2), Montana Code Annotated (MCA).

(11) the definition is proposed to be changed from “alternate reclamation” to “alternative postmining land use”.

(13) “approximate original contour” is proposed to be extensively revised to read as follows:

“Approximate original contour” is defined in 82–4–203, MCA, as “that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or

gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased;

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.”

(26) “community or institutional building” is proposed to be extensively revised to read as follows:

“Community or institutional building” means any structure, other than a public building or a dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(33) “diversion” is proposed to be extensively revised to read as follows:

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

(36) a new definition of “dwelling” is proposed to be added to read as follows:

“Dwelling” means a building inhabited by or useful for habitation by a person or persons.

(38) the existing definition of “ephemeral stream” is proposed to be revised to quote the statutory definition of “ephemeral drainageway” at 82–4–203(17), MCA.

(46) a new definition of “good ecological integrity” is proposed to be added to read as follows:

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

(50) the definition of “higher or better uses” is proposed to be revised to quote the statutory definition at 82–4–203(23), MCA.

(53) the definition of “historically used for cropland” is proposed to be revised by adding a new subparagraph (53)(c) to read as follows:

(c) lands that would likely have been used for cropland for any five or more years out of the 10 years immediately preceding such acquisition but for the same fact of ownership or control of the land as in (53)(a) unrelated to the productivity of the land.

(53) the definition of “hydrologic balance” is proposed to be revised to quote the statutory definition at 82–4–203(24), MCA.

(59) the definition of “incidental boundary change” is proposed to be revised to read “incidental boundary revision”.

(64) The introduction to and subparagraphs (b), (c), (d), (g), and (h) of the definition of “land use” is proposed to be revised to quote from the statutory definitions at 82–4–203, subparagraphs (28), (37), (22), (21), (43), and (20), MCA, to read as follows:

“Land use” is defined in 82–4–203, MCA, as “specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.”

(a) [remains the same]

(b) “Pastureland” is defined in 82–4–203, MCA, as “land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.”

(c) “Grazing land” is defined in 82–4–203, MCA, as “land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.”

(d) “Forestry” is defined in 82–4–203, MCA, as “land used or managed for the long-term production of wood, wood fiber, or wood-derived products.”

(e) Through (f)(ii) [remain the same]

(g) “Recreation” is defined in 82–4–203, MCA, as “land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.”

(h) “Fish and wildlife habitat” is defined in 82–4–203, MCA, as “land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.”

(i) [remains the same]

(67) a new definition of “material damage” is proposed to be added to quote the statutory definition at 82–4–203(30), MCA.

(68) the definition of “materially damage the quantity or quality of water” is proposed to be revised by deleting references to other definitions.

(90) the definition of “prime farmland” is proposed to be revised to quote the statutory definition at 82–4–203(40), MCA.

(103) the definition of “reference area” is proposed to be revised to quote the statutory definition at 82–4–203(44).

(107) the definition of “road” is proposed to be revised to delete the final sentence of the main clause, which currently reads:

The term does not include pioneer or construction roadways that are used for part of the road construction procedure and that are promptly replaced by roads associated with the prospecting or mining operation in the identical right-of-way as the pioneer or construction roadway.

Further, subparagraph (107)(b), defining “haul road,” is proposed to be revised to read as follows: “‘Haul road’ means a road used for more than six months to transport coal, soil, or spoil.”

(143) a new definition of “wildlife habitat enhancement features” is proposed to be added to quote from the statutory definition at 82–4–203(55), MCA.

17.24.302, permit application requirements. Montana proposes to revise subparagraphs (1) and (2) to require that information in the application must be accurate, and that all tests, analyses, surveys, and data collection must be carried out at appropriate times and under appropriate conditions.

17.24.303, permit application legal and financial requirements. Montana proposes to require that applications include a copy of the proposed newspaper advertisement and proof of publication after it is published.

17.24.304, permit environmental baseline information. Montana proposes to: (1) Add a requirement that the uses of springs and uses of surface water bodies be added to the required listings; (2) revise the requirements for vegetation information to change the word “vegetative” to “vegetation,” revise the description of dominant species by deleting the phrase “2 or more” and change the term “number” to “density”; (3) delete the requirements for a narrative discussing current condition or trend for plant community sub-types and also delete the requirement for a range site map; (4) specify that the operator contact the department (of Environmental Quality)

at least three months before planning the required wildlife survey; (5) revise the requirement for a listing of fish and wildlife species by specifying all species and deleting the non-inclusive list that now exists; and (6) revising land use information to require the condition, capability, productivity, and history of use of the land and vegetation within the proposed permit area.

17.24.305, maps and plans. Montana proposes: (1) To revise subparagraph (1)(j) to require that maps showing the land to be affected include the pre-mine topography; (2) to revise subparagraph (2)(a) to require that map certifications submitted separately from the map must be in affidavit form; (3) revise subparagraph (2)(b) to add to the list of maps, plans, and cross-sections that must be prepared by (or under the direction of) and certified by a licensed professional engineer, the materials required under subparagraphs (1)(d), (e), (j), (k), (p), (q), (x), and (z); and (4) revise subparagraph (2)(b)(i) to add to the list of required materials that may be prepared by (or under the direction of) and certified by a licensed professional land surveyor, the materials required under subparagraphs (1)(d), (p), (x), and (z).

17.24.308, operations plan. Montana proposes to: (1) Revise the description of the operations for which a description is required by deleting the word “mining” and the phrase “within the proposed mine plan area”; (2) add to the requirements for which the narrative must demonstrate compliance the applicable rules of subchapter 10 (underground mining); and (3) add to the proposed operations for which compliance must be demonstrated a new subsection which reads as follows:

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

Montana notes that the bracketed word “or” was mistakenly omitted but will be added in the next rule-making.

17.24.312, fish and wildlife plan. Montana proposes: (1) To change from “statement” to “description” the description of the required plan; (2) to delete the statement that nothing “herein” may be construed to weaken the requirement of 82–4–233(1)(a), MCA; and (3) to add a requirement for a description of the wildlife habitat enhancement features that will be integrated with other land uses, pursuant to 82–4–232(9), MCA, and ARM 17.24.313.

17.24.313, reclamation plan. Montana proposes: (1) To require that the reclamation plan include the proposed postmining land use pursuant to ARM 17.24.762; (2) to require that the timetable for completion of reclamation steps be “detailed”; (3) add “other means as approved by the department” to other specified means for showing the plan of highwall backfilling, reduction, “or an alternative thereof”; (4) deleting a provision for “alternate plans other than highwall reduction” if “consistent with the purposes of 82–4–232(7), MCA, and ARM 17.24.821 through 17.24.824”; (5) add a new requirement that the backfilling plan contain:

a demonstration that the proposed postmining topography can be achieved. This demonstration must include a cross-section or set of cross-sections, or other method as approved by the department, to depict the removal of overburden and mineral and the replacement of the swelled spoil;

(6) delete an existing requirement for a plan for early detection of grading problems; (7) add a requirement to include:

a description of postmining drainage basin reclamation that ensures protection of the hydrologic balance, achievement of postmining land use performance standards, and prevention of material damage to the hydrologic balance in adjacent areas, including:

(i) A comparison of premining and postmining drainage basin size, drainage density, and drainage profiles as necessary to identify characteristics not distinguishable on the premining and postmining topographic maps;

(ii) A discussion of how, within drainage basins:

(A) The plan meets each performance standard in ARM 17.24.634;

(B) The requirements of 82–4–231(10)(k), MCA, and ARM 17.24.314 will be met where the postmining topography differs from the premining as allowed by ARM 17.24.301(13)(c);

(f) Drainage channel designs appropriate for preventing material damage to the hydrologic balance in the adjacent area and to meet the performance standards of ARM 17.24.634, including:

(i) Detailed drainage designs for channels that contain critical hydrologic, ecologic or land use functions not already addressed in this rule such as alluvial valley floors, wetlands, steep erosive upland drainages, drainages named on USGS topographic maps, or intermittent or perennial streams. Detailed drainage designs include fluvial and geomorphic characteristics pertinent to the specific drainages being addressed; and

(ii) For all other channels, typical designs and discussions of general fluvial and geomorphic habit, pattern, and other relevant functional characteristics;

(8) revise the plans for material handling to require:

plans for removal, storage, and redistribution of soil, overburden, spoils, and other material in accordance with ARM 17.24.501, 17.24.502, 17.24.503, 17.24.504, 17.24.505, 17.24.507, 17.24.510, 17.24.514, 17.24.515, 17.24.516, 17.24.517, 17.24.518, 17.24.519, 17.24.520, 17.24.521, and 17.24.522, and 17.24.701 through 17.24.703;

(9) require that the operator must submit plans for any necessary monitoring of soils, overburden, spoils, or other materials; (10) require that the narrative of revegetation methods include a discussion of revegetation types, including the acreage of each; and (11) require that the discussion of measures to be used to determine the success of revegetation include the use of reference areas and/or technical standards in relation to the revegetation types.

17.24.315, plans for ponds and embankments. Montana proposes to change the phrase "registered professional engineer" to the phrase "licensed professional engineer" in three places.

17.24.321, transportation facilities plan. Montana proposes (1) to delete the limiting words "haul" and "access," leaving the general word "road"; (2) revise the requirements for application materials to "the following as appropriate for the type of construction" and deleting in several subsequent itemized requirements the word "appropriate"; (3) to change the phrase "registered professional engineer" to the phrase "licensed professional engineer"; (4) add low water crossings to the plans and drawings required to be prepared by (or under the direction of), and certified by, a "licensed professional engineer"; and (5) add 17.24.602, 17.24.603, 17.24.605, and delete 17.24.606, to and from the specified performance standards.

17.24.322, geologic information and coal conservation plan. Montana proposes: (1) To delete, from the coal conservation plan requirements, the location and dimensions of existing areas of spoil, waste, and garbage and other debris disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area; and (2) to add a requirement that:

For an operator with a federal resource recovery and protection plan, the department may review all applicable coal recovery information retained by the bureau of land management, in lieu of or in addition to the information requirements under (3).

17.24.323, grazing plan. Montana proposes to delete this rule.

17.24.324, prime farmland special application requirements. Montana

proposes to delete ARM 17.24.821 through 17.24.825 (alternate reclamation) from the performance standards which the prime farmland reclamation plan must address.

17.24.401, filing of permit application and notice. Montana proposes in two places to revise the phrase "alternate reclamation plan(s)" to the phrase "alternative postmining land use plan(s)."

17.24.404, review of application. Montana proposes: (1) To delete paragraph (9), which provides the applicant with the opportunity for a hearing under the Montana Administrative Procedure Act; and (2) to delete paragraph (10), which forbids the department to approve applications that may be inconsistent with other existing, proposed, or anticipated coal mining and reclamation operations in adjacent areas.

17.24.405, findings and notice of decision. Montana proposes: (1) To revise the date by which the department must approve or deny an application to "no later than 45 days from the date of the acceptability determination except as provided by 75-1-208(4)(b), MCA"; (2) revise the allowed time for an environmental impact statement from "within 365 days of its notice given pursuant to ARM 17.24.401(2)" to "in accordance with 82-4-231, MCA"; (3) delete a requirement that the department publish a summary of the decision in a newspaper in the vicinity of the proposed project; (4) among the required findings, revise the finding dealing with "alternate reclamation" to "alternative postmining land use" and add 17.24.821 to the requirements that must be met; and (5) delete paragraph (7), which provides the applicant with an opportunity for a contested case hearing if prior violations prohibit issuance of the permit.

17.24.412, extension of time to commence mining. Montana proposes: (1) To add a requirement that requests for extensions are subject to the public participation requirements of 17.24.401-17.24.403; and (2) to delete from paragraph (3) a requirement for special newspaper notices of the request.

17.24.413, conditions of permits. Montana proposes to add an additional condition to all permits, to read as follows:

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

17.24.416, permit renewals. Montana proposes to revise the required

newspaper notice so that the renewal application must include the proposed newspaper notice and proof of publication in a newspaper approved by the department.

17.24.427, change of contractor. Montana proposes: (1) To revise paragraph (1) to require that the permittee must notify the department of any proposed new contractor or changes in an existing contractor, and require that notification to the department is required prior to proposed contractor changes if the permit has not been transferred; and (2) to revise paragraph (2) by deleting the existing requirement and adding a new requirement to ensure that the contractor may not conduct any activities on the permit area unless and until the department determines that the information submitted is acceptable and satisfies the requirements of ARM 17.24.303.

17.24.501, general backfilling and grading requirements. Montana proposes to revise paragraph (4) to: (1) Require that grading to approximate original contour must be in accordance with 82-4-232(1), MCA; (2) delete existing requirements that final slopes be graded to prevent slope failure, not exceed the angle of repose, and achieve a minimum long-term safety factor of 1.3; (3) revise subparagraph (4)(a) to require that the operator transport, backfill, and compact to ensure compliance with subparagraph (3)(b) and ARM 17.24.505; (4) further revise subparagraph (4)(a) to require that highwalls must be reduced or backfilled in compliance with ARM 17.24.515(1) or approved highwall reduction alternatives in compliance with ARM 17.24.515(2); and (5) still further revise subparagraph (4)(a) to delete existing requirements pertaining to box-cut spoils. Montana further proposes to revise paragraph (4) by adding a requirement that depressions must be eliminated except as provided in ARM 17.24.503(1).

Montana also proposes to revise 17.24.501, subparagraph (6)(d), to require that all backfilling and grading achieve the approved postmining topography. Montana also proposes to add a new paragraph (7), requiring the operator to notify the department, in writing, upon detection of grading problems that would result in topography not consistent with the approved postmine topography.

17.24.515, highwall reduction. Montana proposes to revise paragraph (1) to require that highwalls must be eliminated and the reduced highwall slope must be no greater than whatever slope is necessary to achieve a minimum long-term static safety factor

of 1.3. Montana also proposes to revise paragraph (2) by deleting existing subparagraph (2)(c) (which provides that highwall reduction alternatives must comply with 17.24.313, 17.24.821–17.21.824). Montana proposes additional new language to read as follows:

(2) Highwall reduction alternatives may be permitted only to replace bluff features that existed before mining and where the department determines that:

(a) Postmining bluffs are compatible with the proposed postmining land use;

(b) Postmining bluffs are stable, achieving a minimum long-term static safety factor of 1.3;

(c) Similar geometry and function exists between pre- and postmining bluffs;

(d) The horizontal linear extent of postmining bluffs does not exceed that of the premining condition; and

(e) Highwalls will be backfilled to the extent that the uppermost mineable coal seam is buried in accordance with ARM 17.24.505(1).

17.24.520, thick overburden and excess spoil. Montana proposes to change the phrase “registered professional engineer” to “licensed professional engineer.” Montana further proposes in subparagraph (3)(k) to delete a reference to 17.24.520(13) in addressing coal mine wastes disposed in mine excavations. Montana further proposes to revise at subparagraph (3)(m) the requirements for a program to return wastes to underground workings to include the performance standards of 17.24.920, 17.24.924(1), 17.24.930, and 17.24.932(1).

17.24.522, permanent cessation of operations. Montana proposes to delete the first two sentences of paragraph (3), which provide for completion of backfilling and grading within 90 days after the department determines the operation is completed, and that final pit reclamation must be as close to the coal loading operation as technical factors allow.

17.24.523, coal fires and coal conservation. Montana proposes to add a second paragraph to read as follows:

(2) Strip or underground mining operation must be conducted to prevent failure to conserve coal, utilizing the best technology currently available to maintain appropriate environmental protection.

The operator shall adhere to the approved coal conservation plan required in ARM 17.24.322.

17.24.601, road and railroad facility construction requirements. Montana proposes to change the phrase “registered professional engineer” to “licensed professional engineer.”

17.24.602, location of roads and railroad facilities. Montana proposes to delete a requirement that the proposed

locations of these facilities be marked on site prior to pre-inspection of the proposed operation.

17.24.603, road and railroad embankments. Montana proposes at paragraph (4) to delete a requirement for a minimum seismic safety factor, and revise the required minimum static safety factor from 1.5 to 1.3.

17.24.605, hydrologic impact of roads and railroads. Montana proposes to revise the existing requirement that drainage structures are required for stream channel crossings. The revision would allow the use of riprap for road crossings of ephemeral streams that are too shallow for placement of a culvert.

17.24.609, other support facilities. This rule requires that certain support structures meet certain design and construction requirements. Montana proposes to revise the rule to specify additional facilities, including septic systems and sewage lagoons, fuel storage and distribution facilities, and environmental monitoring sites.

17.24.623, blasting schedule. Montana proposes to revise paragraph (2) to require that blasting schedules be delivered to each residence within one-half mile of the permit area. Montana further proposes to revise at subparagraph (5)(b) the information required in blasting schedules, to include the township, range, and section of the specific areas, and to delete the requirement that specific blasting areas that are described be compact and no larger than 100 acres.

17.24.624, surface blasting requirements. Montana proposes to revise paragraph (4) to delete the phrase “at all points” within the one-half mile range for audibility of blast warnings.

Montana proposes to revise subparagraph (6)(a) to require that airblast be controlled at any dwelling, or public, commercial, community or institutional building, unless the structure is owned by the operator. Similarly, Montana proposes to revise subparagraph (7)(a) to require that (unless approved by the department), no blasting be conducted within 1,000 feet of any dwelling or public, commercial, community or institutional building. Montana proposes to revise paragraph (11) to specify that peak particle velocities apply at any dwelling, or public, commercial, community or institutional building. Montana proposes to revise paragraph (14) to specify that the scaled-distance formula be calculated from the blast hole nearest to a dwelling, or public, commercial, community or institutional building, except as noted in paragraph (12).

17.24.626, blasting records. Montana proposes to revise subparagraph (1)(d)

to require that blast records include direction and distance, in feet, from the blast hole nearest to a dwelling or commercial, public, community, or institutional building. Montana proposes to revise subparagraph (1)(j) to require blast records to contain total weight of explosives used and total weight of explosives used in each hole.

17.24.633, water quality performance standards. Montana proposes to revise paragraph (2) to read as follows:

(2) Sediment control through BTCA [best technology currently available] practices must be maintained until the disturbed area has been restored, the revegetation requirements of ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, and 17.24.731 have been met, the area meets state and federal requirements for the receiving stream, and evidence is provided that demonstrates that the drainage basin has been stabilized consistent with the approved postmining land use.

17.24.634, reclamation of drainage basins. Montana proposes numerous revisions to paragraph (1); the proposed paragraph (1) reads as follows:

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

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

(b) Approximate original contour;

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

(d) [Remains the same]

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

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

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

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

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

Montana also proposes to revise paragraph (2) to change the phrase “registered professional engineer” to “licensed professional engineer.”

17.24.635, general requirements for diversions. Montana proposes to revise paragraph (5) to change the phrase

“registered professional engineer” to “licensed professional engineer.” Montana also proposes to delete paragraphs (6) and (7).

17.24.636, special requirements for temporary diversions. Montana proposes several revisions to existing paragraph (1), to read (renumbered) as follows:

(1)(a) remains the same, but is renumbered (1).

(2) If channel lining is required to prevent erosion, the channel lining must be designed using standard engineering practices to safely pass design velocities.

(3) Freeboard must be as specified by the department, but no less than 1.0 foot.

Montana also proposes to delete existing subparagraph (2)(a).

17.24.638, sediment control measures. Montana proposes to revise subparagraph (2)(a) to change the specified performance standards that must be met to minimize sediment, to include ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.721, and 17.24.723 through 17.24.726.

17.24.639, sediment ponds and other treatment facilities. Montana proposes to add a new subparagraph (1)(e), to require that sediment ponds be constructed as approved unless modified under ARM 17.24.642(7). Montana further proposes to revise paragraph (2) by deleting the final clause of existing subparagraph (2)(a) [“except as provided below”] and existing subparagraphs (b) through (e). Montana proposes to revise paragraph (3) to specify that the inlet to dewatering devices must not be below the maximum elevation of the sediment storage volume. Montana proposes to revise subparagraph (7)(a) to require that spillway designs assume the impoundment is at full pool; and further to delete a provision that no spillway is required if the sediment pond is entirely excavated. Montana proposes to revise paragraph (10) by adding a provision allowing the department to exempt the top-width requirement for some ponds. Montana proposes to revise paragraph (11) to require that the side slopes of the settled embankment must not be steeper than 3h:1v upstream and 2h:1v downstream, unless otherwise approved by the department. Montana proposes to revise paragraph (17) to change the phrase “registered professional engineer” to “licensed professional engineer.” Montana proposes to revise subparagraph (20)(a) to require that spillway designs assume the impoundment is at full pool. Montana proposes to revise subparagraph (22)(a) to read as follows:

(22)(a) All ponds with embankments must be designed and inspected regularly during

construction under the supervision of, and certified after construction by, a qualified licensed professional engineer experienced in the construction of impoundments. After construction, inspections and certifications must be made and reports filed with the department, pursuant to ARM 17.24.642(4). Inspection and certification reports must be submitted until the embankments are removed.

Montana further proposes to delete subparagraph (22)(c). Montana proposes to revise paragraph (23) to limit inspection requirements to ponds with embankments. At newly renumbered paragraph (25), Montana proposes to change the list of required revegetation performance standards to include ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, and 17.24.731. At renumbered subparagraph (28)(a), Montana proposes that excavated sediment ponds require no spillway and must be able to contain the 10-year, 24-hour precipitation event, and conform with paragraphs (1), (2), (4), (6), (18), (22)(a), (24) and (27). At subparagraph (28)(b), Montana proposes to change the phrase “registered professional engineer” to “licensed professional engineer.”

17.24.642, permanent impoundments and flood control impoundments. Montana proposes to revise paragraph (1) to read as follows:

(1) Permanent impoundments are prohibited unless constructed in accordance with ARM 17.24.504 and 17.24.639, and have open-channel spillways that will safely discharge runoff resulting from a 100-year, 24-hour precipitation event, assuming the impoundment is at full pool for spillway design, or larger event specified by the department. The department may approve a permanent impoundment upon the basis of a demonstration that:

Montana further proposes to delete subparagraphs (1)(g), (1)(h), and (1)(i). At paragraph (2), Montana proposes to limit to permanent impoundments the existing requirement that impoundments meet the performance requirements of 17.24.639. Montana proposes to delete paragraphs (3) through (6). Montana proposes to revise the maintenance provisions of renumbered paragraph (3) to require that all permanent impoundments be routinely maintained, and that ditches and spillways must be cleaned. Montana proposes to revise the inspection and certification provisions of renumbered paragraph (4) to limit the requirement to permanent impoundments, change the phrase “registered professional engineer” to “licensed professional engineer,” and require inspection reports until phase IV bond release. In the content requirements for inspection reports at subparagraphs (4)(c) and (4)(d), Montana proposes to change the phrases “dam or embankment” to the term “impoundment.” Montana proposes to delete existing paragraphs (9) and (10). Montana

proposes new requirements to read as follows:

(5)(a) Flood control impoundments are located upstream of disturbance areas for the purpose of preventing or controlling flooding or discharge and are not designed for sediment control or to be permanent.

(b) Flood control impoundments with embankments must be constructed in accordance with (1)(f) and ARM 17.24.639(7) through (21), and be inspected, maintained and certified according to (3), (4)(a), (4)(d), and (6) and ARM 17.24.639(22) and (23).

(c) Excavated flood control impoundments:

(i) Must be in compliance with ARM 17.24.639(18);

(ii) Must have perimeter slopes that are stable; and

(iii) Must be protected against erosion where surface runoff enters the impoundment area.

(d) An initial pond certification report and inspections must be made for excavated flood control impoundments in accordance with ARM 17.24.639(28)(b). If the volume of the flood control impoundment is used in determination of required volume for a downstream pond, annual certification reports are required in accordance with (4)(a), (4)(c), and (4)(d).

(e) Prior to construction, flood control impoundments must be approved by the department.

(6) Permanent impoundments and flood control impoundments with embankments meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 [Technical Release 60] must be routinely inspected by a qualified licensed professional engineer or by someone under the supervision of a qualified licensed professional engineer, in accordance with 30 CFR 77.216-3.

(7) Plans for any enlargement, reduction in size, reconstruction, or other modifications of permanent impoundments and flood control impoundments must be submitted to the department and must comply with the requirements of this subchapter. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the modification must not be initiated until the department approves the plans.

17.24.645, ground water monitoring. Montana proposes to revise paragraph (1) by deleting “infiltration rates” from the required parameters, and adding that the monitoring must be based on the monitoring program under 17.24.314, and changing the phrase “in the mine plan and adjacent areas” to “in the permit and adjacent areas.” In paragraph (3), Montana proposes to revise the allowance for additional “hydrologic tests” to additional “observations and analyses.” At paragraph (6), Montana proposes to update the citations of water sampling guidelines and the department’s address where the guidelines may be obtained.

17.24.646, surface water monitoring. Montana proposes to revise paragraph

(1) to require that the monitoring be based on the information submitted under 17.24.304. At paragraph (4), Montana proposes that data from post-grading monitoring must be used to determine whether runoff meets requirements, that those data must be used by the department to review requests for water treatment systems; also, other information may be used for those purposes with departmental approval. At paragraph (6), Montana proposes to update the citations of water sampling guidelines and the department's address where the guidelines may be obtained.

17.24.701, removal of soil. Montana proposes to delete existing paragraph (3), and add a new paragraph (4) providing that soil removal is not required for minor disturbances which occur at the site of small structures such as power poles, signs or fences or where operations will not destroy vegetation and cause erosion.

17.24.702, redistribution and stockpiling of soil. Montana proposes to revise paragraph (4) to include requirements for the distribution of soil substitutes, and to revise subparagraph (4)(b) to provide that the department may grant exemptions from the requirement to scarify spoil materials, and provide that if no adverse effects to the redistributed material or postmining land use will occur, such treatments may be conducted after the soil or soil substitute is replaced. At paragraph (6), Montana proposes to delete a requirement that soil replacement be done on the contour whenever possible.

17.24.703, soil substitutes. Montana proposes that one requirement for soil substitutes is that the medium must be the best available in the permit area to support revegetation.

17.24.711, establishment of vegetation. Montana proposes extensive revisions, to read as follows:

(1) Vegetation must be reestablished in accordance with 82-4-233(1), (2), (3), and (5), MCA, as follows:

(a) Sections 82-4-233(1), (2), and (3), MCA, state: "(1) The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

"(a) diverse, effective, and permanent;

"(b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;

"(c) at least equal in extent of cover to the natural vegetation of the area; and

"(d) capable of stabilizing the soil surface in order to control erosion to the extent

appropriate for the approved postmining land use.

"(2) The reestablished plant species must:

"(a) be compatible with the approved postmining land use;

"(b) have the same seasonal growth characteristics as the original vegetation;

"(c) be capable of self-regeneration and plant succession;

"(d) be compatible with the plant and animal species of the area; and

"(e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.

"(3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:

"(a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;

"(b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;

"(c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates."

(b) Section 82-4-233(5), MCA, states: "For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department and on which the reclaimed vegetation otherwise meets the requirements of subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation."

(2) For areas designated prime farmland, the requirements of ARM 17.24.811 and 17.24.815 must be met.

(3) The department shall determine cover, planting, and stocking specifications either on a programmatic basis or for each operation based on local and regional conditions after consultation with and approval by:

(a) [remains the same]

(b) the department of natural resources and conservation for reclamation to land uses involving forestry.

17.24.714, soil stabilization. Montana proposes to revise this rule to read as follows:

(1) Such practices as seedbed preparation, mulching, or cover cropping must be used on all regraded and resoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil until an adequate, permanent cover is established. This requirement may be suspended if the operator demonstrates to the department's satisfaction that it is not needed to control air or water pollution and erosion.

17.24.716, method of revegetation. Montana proposes to revise paragraph (1) by changing the phrase "manner that encourages a prompt vegetative cover and recovery of productivity levels" to "manner that encourages prompt vegetation establishment." At paragraph

(3), Montana proposes to delete a requirement that the operator shall utilize seed and seedlings genotypically adapted to the area when available in sufficient quality and quantity. Montana proposes to revise paragraph (4) by deleting a requirement that the department approve specific weed control plans. Montana also proposes to delete existing paragraph (5), addressing the use of introduced species.

17.24.717, planting of trees and shrubs. Montana proposes several revisions, to read as follows:

(1) Tree or shrub species necessary to meet the approved postmining land use must be adapted for local site conditions and climate. Trees and shrubs must be planted in combination with herbaceous species as necessary to achieve the postmining land use and as approved by the department. If necessary to increase tree and shrub survival, seeding of the herbaceous species may be delayed providing that measures are taken to control air and water pollution and erosion.

17.24.718, soil amendments and management practices. Montana proposes to revise paragraph (2) and add a new paragraph (3) to read as follows:

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

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

17.24.719, livestock grazing. Montana proposes to delete this rule.

17.24.720, annual inspections of revegetated areas. Montana proposes to delete this rule.

17.24.723, reclamation monitoring. Montana proposes to revise paragraph (1) to require monitoring under plans submitted under ARM 17.24.312(1)(d) and 17.24.313(1)(f)(iv) and (1)(g)(ix) and the approved postmining land use as approved by the department. Paragraph (2) is proposed to be revised by adding that monitoring is to demonstrate compliance with other State and Federal laws, in addition to Montana's equivalent of SMCRA. Montana proposes to revise paragraph (3) to delete the requirement that corrective actions be proposed to and approved by the department, but also to require the operator to implement measures to comply with permit requirements. Montana also proposes to delete paragraph (5), which referred the reader

to ARM 17.24.645, 17.24.646, and 17.24.1129.

17.24.724, revegetation success criteria. Montana proposed extensive revision to this rule, to read as follows:

(1) Success of revegetation must be determined by comparison with unmined reference areas or by comparison with technical standards. Reference areas and standards must be representative of vegetation and related site characteristics occurring on lands exhibiting good ecological integrity. The department must approve the reference areas, technical standards, and methods of comparison.

(2) Reference areas are parcels of land chosen for comparison to revegetated areas. A reference area is not required for vegetation parameters with approved technical standards. Reference areas must be in a condition that does not invalidate or preclude comparison to revegetated areas and the operator must:

(a) Have legal right to control the management of all approved reference areas; and

(b) Manage reference areas in a manner that is comparable to the management of the revegetated areas and in accordance with the approved postmining land use.

(3) Technical standards may be derived from:

(a) Historical data generated for a sufficient time period to encompass the range in climatic variations typical of the premine or other appropriate area; or

(b) Data generated from revegetated areas that are compared to historical data representing the range of climatic conditions comparable to those conditions existing at the time revegetated areas are sampled; or

(c) U.S. department of agriculture, U.S. department of the interior, or other publications or sources relevant to the area and land use of interest and approved by the department.

17.24.725, period of responsibility. Montana proposes to revise paragraph (1) so that the responsibility period begins after any activity related to phase III (rather than final) reclamation.

17.24.726, vegetation measurements. Montana proposes to revise this rule extensively, to read as follows:

(1) Standard and consistent field and laboratory methods must be used to obtain and evaluate vegetation data consistent with 82-4-233 and 82-4-235, MCA, and to compare revegetated area data with reference area data and/or with technical standards. Specific field and laboratory methods used and schedules of assessments must be detailed in a plan of study and be approved by the department. Sample adequacy must be demonstrated. In addition to these and other requirements described in this rule, the department shall supply guidelines regarding acceptable field and laboratory methods.

(2) Production, cover, and density shall be considered equal to the approved success standard when they are equal to or greater than 90% of the standard with 90% statistical confidence, using an appropriate

(parametric or non-parametric) one-tail test with a 10% alpha error.

(3) The revegetated areas must meet the performance standards in (1) and (2) for at least two of the last four years of the phase III bond period. Pursuant to ARM 17.24.1113, the department shall evaluate the vegetation at the time of the bond release inspection for phase III to confirm the findings of the quantitative data.

(existing 9) remains the same, but is renumbered (4).

17.24.728, composition of vegetation. Montana proposes to delete this rule.

17.24.730, season of use. Montana proposes to delete this rule.

17.24.732, vegetation requirements for previously cropped areas. Montana proposes to delete this rule.

17.24.733, measurement standards for trees and shrubs. Montana proposes to delete this rule.

17.24.751, fish and wildlife. Montana proposes to revise paragraph (1) by adding a requirement for the operator to report any bald or golden eagle roost site, seasonal concentration area, or breeding territory; and also by adding a requirement that protective measures required by the U.S. Fish & Wildlife Service must be implemented when determined by the department in consultation with the U.S. Fish & Wildlife Service. Montana proposes to revise subparagraph (2)(a) by requiring that all powerlines be constructed in accordance with "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996 (Avian Power Line Interaction Committee, 1996)"; and further by deleting a requirement that distribution lines must be designed and constructed in accordance with "REA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds," or in alternative guidance manuals approved by the department. Montana proposes to revise subparagraph (2)(c) to require operators to design and construct fences, overland conveyers, and other potential structures to permit passage of large mammals, except where the department determines that such requirements are unnecessary. Montana proposes to revise subparagraph (2)(e) to delete a requirement that that reclamation provide habitat in an equal or greater capacity than was provided prior to mining, and replace it with a requirement to provide habitat in accordance with the approved postmining land use; a requirement for inanimate habitat features is proposed to be revised by citing 82-4-231(10)(j) and 82-4-232(9), MCA; and a requirement that vegetative cover may not be less than that required by the approved postmining land use is

proposed for deletion. Montana proposes to revise subparagraph (2)(f) to add the requirements of 82-4-231(10)(j), 82-4-232(9) for wetlands, riparian vegetation along rivers and streams and bordering ponds and lakes. Montana proposes to delete subparagraphs (2)(g), (2)(i), and (2)(j).

17.24.761, air resources protection. Montana proposes to delete most of this rule, leaving only existing paragraph (4) (renumbered as paragraph (2)) and, in paragraph (1), the requirement that operators employ fugitive dust controls in accordance with 82-4-231(10)(m), MCA, the operator's air quality permit.

17.24.762, postmining land use. Montana proposes to largely revise this rule, to read as follows:

(1) The postmining land use must satisfy 82-4-203(28) and 82-4-232(7), MCA. In applying 82-4-232(7), MCA, the following principles apply:

(a) The premining uses of the land to which the postmining land use is compared are those that the land previously supported or could have supported if the land had not been mined and had been properly managed.

(b) The postmining land use for land that has been previously mined and not reclaimed must be judged on the basis of the land use that existed prior to any mining. If the land cannot be reclaimed to the use that existed prior to any mining because of the previously mined condition, the postmining land use must be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(c) The postmining land use for land that has received improper management must be judged on the basis of the premining use of surrounding lands that have received proper management.

(d) If the premining use of the land was changed within five years of the beginning of mining, the comparison of postmining use to premining use must include a comparison with the use of the land prior to the change as well as its uses immediately preceding mining.

(2) Alternative postmining land uses may be proposed and must be determined in accordance with 82-4-232(7) and (8), MCA, and ARM 17.24.821 and 17.24.823.

(3) Certain premining facilities may be replaced pursuant to 82-4-232(10), MCA.

17.24.764, cropland reclamation. Montana proposes to add this new rule, to read as follows:

17.24.764 CROPLAND RECLAMATION (1) The department may not approve a postmining land use of cropland unless the following criteria are met:

(a) Prior to mining, all soils within the proposed cropland reclamation area must have been at least capability class IV, based on U.S. natural resources conservation service criteria;

(b) Soils proposed for use must have the following properties:

(i) Loamy texture, as defined by the U.S. soil conservation service in the Soil Survey

Manual, chapter 4 as revised May, 1981, pp. 4-56 and 4-57;

(ii) Rock fragment (gravels, cobbles, and channers only) contents less than 20% in the first lift and less than 35% in the second lift;

(iii) After materials are replaced, no greater than moderate wind and water erosion hazards as determined by U.S. natural resources conservation service procedures; and

(iv) Levels of electrical conductivity, sodium adsorption ratio, and plant available water-holding capacity meeting the criteria for class III soils according to the "Land Capability Guide for Montana, U.S. Soil Conservation Service, June 1988", which is incorporated by reference into this rule. A copy of this document may be obtained from the Natural Resources Conservation Service, 10 E. Babcock St., Bozeman, MT 59715;

(c) Soil materials must be capable of selection and handling in such a way, and redistribution to such a thickness, and the underlying regraded spoil properties must be of sufficient quality, that the postmining productivity of the root zone will be sufficient to support cropland as the postmining land use;

(d) Slope gradients must not exceed 8%;

(e) The area must receive a minimum of 12 inches average annual precipitation, or there must be sufficient irrigation water available and committed to maintain crop production;

(f) The area must not be subject to flooding that would impair its suitability as cropland due to flood effects including, but not limited to, erosion, siltation, and inundation;

(g) The area must have a minimum of 90 frost-free days per year; and

(h) The department must determine that:

(i) Saline seep on the proposed cropland area will not occur; and

(ii) The reclaimed area will not function as a saline seep recharge area for lands down-gradient.

(2) The operator shall comply with the following requirements in reclaiming to cropland:

(a)(i) Soil materials must be selected and handled in such a way and redistributed to such a thickness, and the underlying regraded spoil properties must be of sufficient quality such that the postmining productivity of the root zone will be sufficient to support cropland as the postmining land use.

(ii) The following minimum requirements must be met:

(A) Soils must be replaced to a minimum thickness of 24 inches; and

(B) The root zone thickness must be consistent with the requirements of ARM 17.24.501(2);

(b) If necessary to protect replaced soil materials from wind and water erosion, or if necessary to enhance soil productivity, stability or the capacity for root penetration, a grass-legume mixture must be planted and maintained as determined by the department; and

(c) Soil amendments must be added in accordance with ARM 17.24.718.

17.24.815, prime farmland revegetation. Montana proposes to create a new subparagraph (1)(a) to

require that if the approved postmining land use is not cropland, either (1) test plots must be cropped to demonstrate restoration of productivity; the rest of the area, and the test plots after productivity demonstration, must be revegetated in accordance with the standards of ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, and 17.24.731 and with the approved postmining land use; or (2), the entire disturbed area might be cropped until productivity demonstration, after which the entire area must be revegetated as above. Montana also proposes a new subparagraph (1)(b) to provide that if the approved postmining land use is cropland, that the area be permanently reclaimed to cropland.

17.24.821. Montana proposes to change the title of this rule from "Alternate Reclamation" to "Alternative Postmining Land Uses: Submission of Plan." The body of the rule is proposed to be revised extensively, to read:

(1) An operator may propose to the department a plan for a higher or better use as an alternative postmining land use pursuant to 82-4-232(7) and (8), MCA. With appropriate maps, narrative, and other materials, the plan must:

(a) describe the nature of the alternative postmining land use;

(b) address all of the criteria in 82-4-232(8) and (9), MCA; and

(c) address the applicable requirements of ARM 17.24.823(1).

(2) Each application for alternative postmining land use is subject to public review requirements of subchapter 4 either as part of a new application or as an application for a major revision. However, in its notice of application to government entities pursuant to ARM 17.24.401, the department shall allow 60 days for submission of comments from authorities having jurisdiction over land use policies and plans, and from appropriate state and federal fish and wildlife agencies.

17.24.823. Montana proposes to change the title of this rule from "Alternate Reclamation: Approval Of Plan And Review Of Operation" to "Alternative Postmining Land Uses: Approval of Plan." The body of the rule is proposed to be revised extensively, to read:

(1) The department may approve a proposed alternative postmining land use if all of the following criteria are met:

(a) the requirements of 82-4-232(8) and (9), MCA;

(b) the proposed postmining land use is compatible, where applicable, with existing local, state or federal land use policies or plans relating to the permit area. Demonstration of compatibility with land use policies and plans must include, but is not limited to:

(i) written statement of the authorities with statutory responsibilities for land use policies

and plans submitted pursuant to ARM 17.24.821(2); and

(ii) as applicable, obtaining any required approval, including any necessary zoning or other changes required for land use by local, state or federal land management agencies. This approval must remain valid throughout the strip or underground mining operations;

(c) specific plans are submitted to the department that show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be financed, developed, and achieved within a reasonable time after mining and how it will be sustained. These plans must be supported, if appropriate, by letters of commitment from parties other than the operator;

(d) as applicable, provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the operator as appropriate, to provide the public facilities in a manner compatible with the plans submitted;

(e) plans for the postmining land use are designed under the general supervision of a licensed professional engineer, or other appropriate professional, to ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and aesthetic design appropriate for the postmining use of the site;

(f) the use will not involve unreasonable delays in reclamation; and

(g) appropriate measures submitted by state and federal fish and wildlife management agencies to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants have been incorporated into the plan.

17.24.824, alternate reclamation; alternative postmining land uses. Montana proposes to delete this rule.

17.24.825, alternate reclamation; alternative revegetation. Montana proposes to delete this rule.

17.24.826, alternate reclamation; period of responsibility for alternate revegetation. Montana proposes to delete this rule.

17.24.832, auger mining performance standards. Montana proposes to revise paragraph (4) by deleting the existing contemporaneous reclamation standard and replacing it with a cross-reference to the requirements of 17.24.501(6)(c).

Montana also proposes to add a new subparagraph (5)(b) to require that each auger hole discharging water not containing acid- or toxic-forming materials must be sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the department. And Montana proposes to revise subparagraph (5)(c) to change the requirement for auger holes not discharging water to be sealed within 30 days to "as contemporaneously as

practicable with the augering operation.”

17.24.903, underground mining, general performance standards. Montana proposes to add a new paragraph (2) to require that adversely affected water supplies must be replaced in accordance with 82–4–243 and 82–4–253, MCA, and ARM 17.24.648.

17.24.911, subsidence control. Montana proposes to delete subparagraph (7)(d), which required replacement of any adversely affected domestic water supply.

17.24.924, disposal of underground development waste, general requirements. At subparagraphs (4)(a), (18)(a), and (18)(d), Montana proposes to change the phrase “registered professional engineer” to “licensed professional engineer.” At paragraph (9), Montana proposes to revise the list of revegetation performance standards, to include ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, and 17.24.731.

17.24.927, disposal of underground development waste, durable rock fills. In paragraphs (1) and (2), Montana proposes to change the phrase “registered professional engineer” to “licensed professional engineer.”

17.24.930, placement and disposal of coal processing waste: special application requirements. At subparagraph (2)(a)(i), Montana proposes to change the phrase “registered professional engineer” to “licensed professional engineer.”

17.24.932, disposal of coal processing waste. At subparagraph (5)(a), Montana proposes to change the phrase “registered professional engineer” to “licensed professional engineer.”

17.24.1001, prospecting permit requirement. At subparagraph (1)(b), Montana proposes to add a requirement for a prospecting permit if conducted on an area designated unsuitable for strip or underground coal mining pursuant to ARM 17.24.1131. Montana also proposes to add a new subparagraph (2)(d), to read as follows:

(d) For any lands protected under 82–4–227(13), MCA, or ARM 17.24.1131, a demonstration that, to the extent technologically and economically feasible, the proposed prospecting activities will minimize interference with the values for which those lands were designated. The application must include documentation of consultation with the owner of the feature causing the land to come under the designation, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to be so designated;

Montana further proposes to add a new subparagraph (1)(q), to require a public notice and proof of publication in accordance with 17.24.303(23), and providing that the procedures of 17.24.401(3) and (5), 17.24.402, and 17.24.403 must be followed. Montana further proposes several new provisions, to read as follows:

(6) The department may not approve a prospecting permit application unless the application affirmatively demonstrates and the department finds in writing, on the basis of information set forth in the application or information otherwise available that is compiled by the department, that:

(a) The application is complete and accurate and that the prospecting and reclamation will be conducted in accordance with all applicable requirements of this subchapter;

(b) The proposed prospecting operation will not jeopardize the continued existence of endangered or threatened species or result in destruction or adverse modifications of their critical habitats;

(c) The application complies with applicable federal and state cultural resource requirements, including ARM 17.24.318, 17.24.1131 and 17.24.1137; and

(d) The proposed prospecting activities will meet the requirements of (2)(d) and that the owner of the feature causing any land to come under a protected designation, pursuant to 82–4–227(13), MCA, or ARM 17.24.1131, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to be so designated, have been provided the opportunity to comment on the department’s finding on this matter.

(7) Prospecting related activities or facilities that are conducted or created in accordance with this rule and ARM 17.24.1002 through 17.24.1014 and 17.24.1016 through 17.24.1018 must be transferred to a valid strip or underground mining permit whenever such activities or facilities become part of mine operations in conjunction with ARM 17.24.308(2) or 17.24.609.

17.24.1003, renewal and transfer of permits. Montana proposes only to revise the title of this rule by adding the words “and transfer.”

17.24.1018, notice of intent to prospect. Montana proposes to revise this rule by deleting existing subparagraph (1)(b)(i), which provides for a notice of intent if the purpose of the prospecting is not to determine the location, quality or quantity of a natural mineral deposit. Montana also proposes to add a new paragraph (2), to provide for a notice of intent if the prospecting is to gather environmental data. Montana also proposes to revise paragraph (9) to require that ARM 17.24.1001(2)(k) and (q) are applicable to notices of intent.

17.24.1104, bonding, adjustment of amount. Montana proposes to revise

paragraph (1) to change bond “adjustments” to “bond increases” and “area revised” or “work changes” to “increases.” Montana proposes to revise paragraph (3) to limit bond adjustments for “other circumstances” to those not related to the completion of reclamation work, and to provide that bond reductions involving disturbed land previously released from reclamation liability in accordance with ARM 17.24.1111 through 17.24.1115 and 17.24.1116(6) are not considered bond releases subject to 17.24.1111.

17.24.1106, bonding: terms and conditions of bond. Montana proposes to delete existing paragraph (1), which provides that the department may not accept surety bonds in excess of 10% of the surety company’s capital surplus account as shown on a balance sheet certified by a certified public accountant. Montana also proposes to add a new subparagraph (1)(b) providing that the department may not accept surety bonds from a surety company that is not listed in the U.S. Department of the Treasury’s listing of approved sureties (Circular 570).

17.24.1108, bonding, certificates of deposit. Montana proposes to revise paragraph (1) to allow additional institutions to determine the maximum insurable amount. Montana also proposes to revise paragraph (2) to limit automatically renewable certificates of deposit to banks insured by the FDIC or credit unions insured by the national credit union administration.

17.24.1109, bonding, letters of credit. Montana proposes to revise subparagraph (1)(d), and add new subparagraphs (1)(e) through (1)(g), to read as follows:

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

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

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

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

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

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

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

17.24.1116, bonding, criteria and schedule for release. Montana proposes to delete paragraph (6), which addresses alternate reclamation. Montana also proposes to revise subparagraphs (6)(b) through (6)(d), and to add a new paragraph (7), to read as follows:

(b) Reclamation phase II is deemed to have been completed when:

(i) [remains the same].

(ii) At least two growing seasons (spring and summer for two consecutive years) have elapsed since seeding or planting of the affected area;

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

(iii) through (v) remain the same, but are renumbered (iv) through (vi).

(c) Reclamation phase III is deemed to have been completed when:

(i) The applicable responsibility period (which commences with the completion of any reclamation treatments as defined in ARM 17.24.725) has expired and the revegetation criteria in ARM 17.24.711, 17.24.713, 17.24.714, 17.24.716 through 17.24.718, 17.24.721, 17.24.723 through 17.24.726, 17.24.731 and 17.24.815, as applicable to and consistent with the approved postmining land use are met;

(ii) A stable landscape has been established consistent with the approved postmining land use;

(iii) The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of ARM 17.24.633 or the permit; and

(iv) As applicable, the provisions of a plan approved by the department for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the department; or

(v) The lands meet the special conditions provided in 82-4-235(3)(a), MCA;

(d) Reclamation phase IV is deemed to have been completed when:

(i) All disturbed lands within any designated drainage basin have been reclaimed in accordance with the phase I, II, and III requirements;

(ii) through (v) [remain the same].

(vi) Implementation of any alternative land use plan approved pursuant to ARM 17.24.821 and 17.24.823 has been successfully achieved; and

(vii) [remains the same].

(7) Information from annual reports and monitoring data, generated pursuant to ARM 17.24.645, 17.24.646, 17.24.723, and 17.24.1129, and from department inspection reports may be used or referenced to support applications for bond release.

17.24.1125, liability insurance.

Montana proposes to revise paragraph (2) to require that liability insurance policies must be maintained in full force until final bond release on the permit area.

17.24.1129, annual report. Montana proposes to revise subparagraph (2)(e) to require to be included in annual reports any vegetation monitoring data and analyses pursuant to 17.24.723. Montana also proposes to revise paragraph (3) to clarify that only maps containing information listed in ARM 17.24.305(1) must be certified in accordance with ARM 17.24.305.

17.24.1131, protection of parks, historic sites, and other lands. Montana proposes to revise this rule to clarify that it applies to lands protected under paragraph (13) of 82-4-227, MCA.

17.24.1132, lands where mining is prohibited. Montana proposes to revise subparagraph (1)(a) to define "valid existing rights" to have the same definition as the definition of the term contained in 30 CFR 761.5 (2003), which is incorporated by reference into the rule.

17.24.1133, lands where mining is prohibited, procedures. Montana proposes to revise paragraph (2), add new subparagraphs (2)(a) and (2)(b) and new paragraph (3), to read as follows:

(2) Whenever a proposed operation would be located on any lands listed in 82-4-227(7) or (13), MCA, (except for proximity to public roads) or ARM 17.24.1131, the department shall reject the application unless:

(a) The applicant has valid existing rights for the proposed permit area; or

(b) The operation existed when the land came under the protection of 82-4-227(7) or (13), MCA, (except the proximity of public roads) or ARM 17.24.1131. This exception applies only to land within the permit area as it exists when the land comes under this protection.

(3) Procedures for submitting requests and for determining valid existing rights must be conducted in accordance with 30 CFR 761.16 (2003), which is incorporated into this rule by this reference. Copies of 30 CFR 761.16 may be obtained from the department at its Helena office.

17.24.1201, inspections. Montana proposes several revisions to this rule, to read as follows:

(1) The department shall conduct an average of at least one partial inspection per month of each active mining operation and such partial inspections of each inactive mining operation as are necessary to enforce the Act, the rules adopted under the Act and the permit, at least one complete inspection per calendar quarter of each active and inactive mining operation, and such periodic partial or complete inspections of prospecting operations as are necessary to enforce the Act, the rules adopted pursuant thereto, and the permit.

(2) A partial inspection is an on-site or aerial observation of the operator's compliance with some of the mining or prospecting permit conditions and requirements. Aerial inspections shall be conducted in a manner and at a time that reasonably ensure the identification and documentation of conditions at each operation in relation to permit conditions and requirements.

(3) A complete inspection is an on-site observation of the operator's compliance with all of the mining or prospecting permit conditions and requirements within the entire area disturbed or affected by the operation.

(4) Inspections must occur without prior notice to the permittee, except for necessary on-site meetings, be conducted on an irregular basis, and be scheduled to detect violations on nights, weekends, and holidays.

17.24.1202. Montana proposes revisions to both the title and body of this rule, to read as follows:

#### 17.24.1202 CONSEQUENCES OF INSPECTIONS AND COMPLIANCE REVIEWS

(1) Inspectors shall examine mining and reclamation activities and promptly file with the department inspection reports adequate to determine whether violations exist.

(2) If it is determined on the basis of an inspection that the permittee is, or any condition or practice exists, in violation of any requirement of this part or any permit condition required by this part, the director or an authorized representative shall promptly issue a notice of noncompliance or order of cessation for the operation or the portion of the operation relevant to the condition, practice, or violation in accordance with 82-4-251, MCA, and this subchapter.

(3) The department may order changes in mining and reclamation plans as are necessary to ensure compliance with the Act and the rules adopted pursuant thereto.

(4) If on the basis of field inspection or review of records or reports the department determines that reclamation is unsuccessful in terms of the Act, the rules adopted pursuant thereto or permit conditions or requirements, the department shall order the operator to immediately investigate and determine the cause. The operator shall subsequently submit an investigative report along with a prescribed course of corrective action, so that alternatives can be employed to promptly ensure compliance with the Act, the rules adopted pursuant thereto, and the permit.

17.24.1206, enforcement. Montana proposes to revise paragraph (4) to delete a provision that if a notice of noncompliance or cessation order does not require any abatement, terminations of abatement need not be issued. Montana proposes to revise subparagraph (5)(d) to clarify that requests for abatement extensions beyond 90 days must be submitted to the board of environmental review, and that hearings must be a contested case

hearings in accordance with 82-4-206, MCA.

17.24.1211, civil penalties. Montana proposes to revise paragraph (2) to clarify that to contest the fact of violation or the amount of penalty, requests for hearings must be submitted to the board of environmental review, and that hearings must be a contested case hearings in accordance with 82-4-206, MCA.

17.24.1212, civil penalty point system. Montana proposes to revise paragraph (4) to clarify that the hearings specified are those requested under 82-4-254(3), MCA.

17.24.1219, individual civil penalties, procedures. Montana proposes to revise paragraph (2) to reduce the time for an assessment to become final from 30 days to 20 days, and decreases the length of time allowed for an individual to request a hearing from 30 days to 20 days; also, Montana proposes that a request for hearing is a hearing under 82-4-254(3), MCA. Montana proposes to revise paragraph (4) to provide that the hearing on the individual civil penalty must be a contested case hearing conducted in accordance with 82-4-206(2), MCA.

17.24.1226, small operator assistance, qualifications of providers. Montana proposes to revise subparagraph (2)(a)(vi) to require providers to be capable of meeting the applicable standards and methods contained in ARM 17.24.645 and 17.24.646.

17.24.1263, suspension or revocation of blasters license. Montana proposes to revise paragraph (3) to clarify that blasters have a right to request a contested case hearing before the board of environmental review.

17.24.1302, revision of permits. Montana proposes many revisions to this rule, to read as follows:

(1) Within one year of October 22, 2004, each operator and each test pit prospector shall submit to the department an application for all permit revisions necessary to bring the permit and operations conducted thereunder into compliance with subchapters 3 through 12 as they read on October 22, 2004.

(2) A permit revision application submitted solely for purposes of (1) is a minor revision for purposes of subchapter 4.

(3) No permittee may continue to mine or reclaim under an operating permit after the midterm (date that is two and one-half years after permit issuance or renewal) of the permit or the permit renewal date, whichever occurs later, unless the permit has been revised to comply with subchapters 3 through 12, as amended on October 22, 2004.

In addition to the proposed revisions described above, Montana proposed numerous editorial revisions and codification changes necessitated by additions or deletions of provisions.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

#### Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your written comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

#### Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. MT-025-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at (307) 261-6550. In the final rulemaking, we will not consider or include in the administrative record any electronic comments received after the time indicated under **DATES** or at e-addresses other than the Casper Field Office.

#### Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

#### Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4

p.m., m.s.t. on December 14, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

#### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### IV. Procedural Determinations

#### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

#### Executive Order 12866—Regulatory Planning and Review

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

#### Executive Order 12988—Civil Justice Reform

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

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

#### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

#### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

No environmental impact statement is required for this rule since agency decisions on proposed State regulatory programs and amendments thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### *Regulatory Flexibility Act*

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

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or

tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

#### **List of Subjects in 30 CFR Part 926**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 27, 2005.

**James F. Fulton,**

*Acting Regional Director, Western Region.*

[FR Doc. 05–23396 Filed 11–28–05; 8:45 am]

**BILLING CODE 4310–05–P**

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 943**

[Docket No. TX–055–FOR]

#### **Texas Regulatory Program**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to and additions of regulations and statutes regarding the State’s annual fees that are required from coal mining permit holders. In addition to the current annual fee, Texas proposes to add two new annual fees. Texas intends to revise its program to reduce the economic cost to the coal mining industry as a whole and to require coal mining permit holders that have ceased mining to pay annual fees.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.t., December 29, 2005. If