of a Federalism assessment. The FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference.

Issued on: February 4, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 625, as set forth below:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1.The authority citation for part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; Sec. 1073 of Pub. L. 102–240, 105 Stat. 1914, 2012; 49 CFR 1.48(b) and (n).

2. In § 625.4, revise paragraph (a)(1) to read as follows:

§ 625.4 Standards, policies, and standard specifications.

* * * * *

(a) * * * (1) A Policy on Geometric Design of Highways and Streets, AASHTO 2001. [See § 625.4(d)(1)]

* * * * *

[FR Doc. 02–3217 Filed 2–11–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–003–FOR]

Montana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), approve, with certain exceptions, a proposed amendment to the Montana regulatory program (the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposed revisions to Title 26, Chapter 4, Subchapters 3 through 12 of the Administrative Rules of Montana (ARM). Montana revised its program to be consistent with the corresponding Federal regulations, incorporate additional flexibility afforded by the revised Federal regulations, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: February 12, 2002.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director; Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 E. B Street, Room 2128; Casper, WY 82601–1918; Telephone: (307) 261–6550, Internet address: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

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 the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letters dated February 1, 1995, and February 28, 1995, Montana sent us an amendment to its program (Administrative Record Nos. MT–12–01 and MT–12–05) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to letters dated July 2, 1985, May 11, 1989, and March 29, 1990 (Administrative Record Nos.

MT–60–01, MT–60–04, and MT–60–07) that we sent to Montana in accordance with 30 CFR 732.17(c); in response to the required program amendments at 30 CFR 926.16(b), (c), (d), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7), (e)(8), (f), (h), (i), and (j); and at its own initiative. Montana proposed changes to: ARM 26.4.301, definitions; ARM 26.4.303, legal, financial, compliance, and related information; ARM 26.4.304, baseline information: environmental resources; ARM 26.4.308, operations plan; ARM 26.4.314, plan for protection of the hydrologic balance; ARM 26.4.321, transportation facilities plan; ARM 26.4.404, review of application; ARM 26.4.405, findings and notice of decision; ARM 26.4.405A, improvidently issued permits: general requirements; ARM 26.4.405B, improvidently issued permits: revocation; ARM 26.4.407, conditions of permit; ARM 26.4.410, permit renewal; ARM 26.4.501A, final grading requirements; ARM 26.4.505, burial and treatment of waste materials; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.524, signs and markers; ARM 26.4.601, general requirements for road and railroad loop construction; ARM 26.4.602, location of roads and railroad loops; ARM 26.4.603, embankments; ARM 26.4.605, hydrologic impacts of roads and railroad loops; ARM 26.4.623, blasting schedule; ARM 26.4.633, water quality performance standards; ARM 26.4.634, reclamation of drainages; ARM 26.4.638, sediment control measures; ARM 26.4.639, sedimentation ponds and other treatment facilities; ARM 26.4.642, permanent and temporary impoundments; ARM 26.4.645, groundwater monitoring; ARM 26.4.646, surface water monitoring; ARM 26.4.702, redistribution and stockpiling of soil; ARM 26.4.711, establishment of vegetation; ARM 26.4.721, eradication of rills and gullies; ARM 26.4.724, use of revegetation comparison standards; ARM 26.4.726, vegetation production, cover, diversity, density, and utility requirements; ARM 26.4.821, alternate reclamation: submission of plan; ARM 26.4.825, alternate reclamation: alternate revegetation; ARM 26.4.924, disposal of underground development waste: general requirements; ARM 26.4.927, disposal of underground development waste: durable rock fills; ARM 26.4.930, placement and disposal of coal processing waste: special application requirements; ARM 26.4.932, disposal of coal processing waste; ARM 26.4.1001, application requirements; ARM 26.4.1001A, notice of intent to prospect; ARM 26.4.1002, information and monthly reports; ARM 26.4.1005, drill holes; ARM 26.4.1006, roads and other transportation facilities; ARM 26.4.1007, grading, soil salvage, storage, and redistribution; ARM 26.4.1009, diversions; ARM 26.4.1011, hydrologic balance; ARM 26.4.1014, test pits: application requirements, review procedures, bonding, and additional performance standards; ARM 26.4.1116, bonding: criteria and schedule for release of bond; ARM 26.4.1116A, reassertion of jurisdiction; ARM 26.4.1141, designation of lands unsuitable: definition; ARM 26.4.1206, notices, orders of abatement and cessation orders: issuance and service; and ARM 26.4.1212, point system for civil penalties and waivers.

We announced receipt of the proposed amendment in the March 15, 1995, **Federal Register** (60 FR 13932; Administrative Record No. MT–12–12). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on April 14, 1995. We received responses from six federal agencies and one citizen group.

During our review of the amendment, we identified the rules requiring clarification prior to making an evaluation of the proposed revisions. Those rules requiring clarification were: ARM 26.4.301(78), the definition of ''owned or controlled;'' ARM 26.4.303, legal, financial, compliance, and related information; ARM 26.4.304, baseline information: environmental resources; ARM 26.4.314, plan for the protection of the hydrologic balance; ARM 26.4.404, review of application; ARM 26.4.407, conditions of a permit; ARM 26.4.410, permit renewal; ARM 26.4.505 and 26.4.510, burial and treatment of waste materials and disposal of offsite-generated waste and fly ash; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.603 and 26.4.639, sedimentation ponds and other treatment facilities; ARM 26.4.645 and 26.4.646, groundwater and surface water monitoring; ARM 26.4.721, eradication of rills and gullies; ARM 26.4.821, alternate reclamation: submission of plan; ARM 26.4.924, disposal of underground development waste: general requirements; ARM 26.4.927, disposal of underground development waste: durable rock fills; ARM 26.4.1001, permit requirement; ARM 26.4.1001A, notice of intent to prospect; ARM 26.4.1006, roads and other transportation facilities; ARM 26.4.1009, diversions; and 26.4.1014, prospecting.

We notified Montana of those rules requiring clarification by letter dated October 17, 1995 (Administrative Record No. MT–12–16). Montana responded with further explanation in a letter dated February 6, 1996 (Administrative Record No. MT–12–19). Following receipt of Montana's February 6, 1996, letter, we identified concerns with ARM 26.4.304, baseline information: environmental resources; ARM 26.4.404, review of application; ARM 26.4.505 and 26.4.510, burial and treatment of waste materials and disposal of off-site generated waste and fly ash; ARM 26.4.519A, thick overburden and excess spoil; ARM 26.4.639, sediment ponds and other treatment facilities; ARM 26.4.821, alternate reclamation; ARM 26.4.924 and 26.4.927, disposal of underground development waste; and ARM 26.4.1014, prospecting. We notified Montana of these concerns by letter dated July 10, 1997 (Administrative Record No. MT–12–20).

Meanwhile, at the same time we were reviewing this amendment, Montana made subsequent changes to some of the rules contained in this amendment and submitted them in another amendment dated March 5, 1996 (SPATS No. MT–018–FOR; Administrative Record No. MT–15–01). Those rules were: ARM 26.4.410, permit renewal, ARM 26.4.1001, prospecting permit requirement; and ARM 26.4.1001A, notice of intent to prospect. OSM and Montana subsequently decided to withdraw the prospecting and permit renewal rules from SPATS No. MT–003–FOR and consider them in SPATS No. MT–018–FOR (Administrative Record Nos. MT–12–21 and MT–15–14). These withdrawn rules addressed the required program amendments at 30 CFR 926.16(f), (h), (i), and (j).

Concerning this amendment, Montana responded by letter dated July 17, 2000 (Administrative Record No. MT–12–23), that it would not submit further revisions to this amendment. Montana requested that OSM proceed with the final rule **Federal Register** notice. Montana stated that it would address the existing deficiencies in this amendment in a new submission. OSM then proceeded writing the final rule **Federal Register** notice on SPATS No. MT–003–FOR.

However, during the writing of the final rule, OSM decided to request a meeting with Montana to discuss the unresolved issues in MT–003–FOR. The meeting was held at the Montana Department of Environmental Quality (DEQ), Helena, Montana, on February 27, 2001. During the meeting, OSM and the Montana DEQ decided that some

issues were, in fact, resolvable due to a re-interpretation of Montana's responses and/or a subsequent revision of Montana's rules.

As a result of the February 2001, meeting, Montana submitted revisions and/or additional explanatory information by letter dated May 15, 2001 (Administrative Record No. MT–12–25). Montana submitted additional explanatory information concerning the lack of acid-forming materials in the Montana coal fields to address the issue with ARM 26.4.304(6)(b)(ii)(B). Montana proposed editorial changes to ARM 26.4.407(4). Montana proposed new language at ARM 26.4.505(5) to prohibit acid, acid-forming, toxic, or toxic-forming wastes from being used in an impoundment. Montana proposed new language at ARM 26.4.505(7) to provide that the same notification requirements concerning potential hazards at waste disposal sites also pertain to temporary waste impoundments. Montana proposed new language at ARM 26.4.639 to address the construction of a single spillway and to state that an excavation requires no spillway. Montana proposed to delete the subsection at ARM 26.4.924(15) which OSM disapproved in the August 19, 1992, **Federal Register** notice, and to delete cross-reference to it at ARM 26.4.927(3)(a). This deletion is a partial response to a required program amendment which OSM put on the Montana program on August 19, 1992 at 30 CFR 926.16(e)(9).

We announced receipt of the proposed amendment in the June 1, 2001, **Federal Register** (66 FR 29741). In the same document, we reopened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT–12–28). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 2, 2001. We received comments from two Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with the exceptions as described below.

A. Minor Revisions to Montana's Rules

Montana proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

26.4.301, ARM, subsections (79) through (119), (121) through (133), and (135) through (137), (30 CFR 701.5), definitions;

26.4.407, ARM, subsections (1) and (2), (30 CFR 773.17), conditions of permit;

26.4.601, ARM, subsection (7), (30 CFR 816.150/817.150), general requirements for road and railroad loop construction;

26.4.639, ARM, subsection (18)(c), (30 CFR 816.49/817.49), sedimentation ponds and other treatment facilities;

26.4.711, ARM, subsections (2), (3), (4), and (5), (30 CFR 816.111/817.111 and 816.116/817.116), establishment of vegetation;

26.4.924, ARM, subsections (5), (10) through (14), (16), (17), (18), and (20); (30 CFR 816.71/817.71, 816.81/817.81, and 816.83/817.83), disposal of underground development waste: general requirements;

26.4.1005, ARM, subsection (2); (30 CFR 815.15(i) and 816.41(a)/817.41(a)), drill holes;

26.4.1006, ARM, subsection (1); (30 CFR 816.150/817.150, 816.180/817.180, and 816.181/817.181), roads and other transportation facilities;

26.4.1007, ARM subsection (2); (30 CFR 815.15(d)), grading, soil salvage, storage, and redistribution; and

26.4.1009, ARM, subsection (1); (30 CFR 816.43/817.43), diversions.

Because these changes are minor and nonsubstantive, we find that they will not make Montana's rules less effective than the corresponding Federal regulations.

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

Montana proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

26.4.304, ARM, subsection (6)(a)(iii), (30 CFR 780.21/784.14), baseline information: environmental resources;

26.4.308, ARM, subsection (2), (30 CFR 780.11/784.11 and 780.37/784.24), operations plan;

26.4.314, ARM, subsection (3), (SMCRA section 510(b) and 30 CFR 780.21/784.14), plan for protection of the hydrologic balance;

26.4.405, ARM, subsections (6) and (8), (30 CFR 773.15), findings and notice of decision;

26.4.501A, ARM, subsection (3)(a), (30 CFR 816.101/817.101), final grading requirements;

26.4.524, ARM, subsection (2), (30 CFR 816.11/817.11), signs and markers;

26.4.601, ARM, subsection (5), (30 CFR 816.151(a)(1)/817.151(a)(1)), general requirements for road and railroad loop construction;

26.4.602, ARM, subsection (2), (30 CFR 816.151/817.151 and 30 CFR 780.37/784.24), location of roads and railroad loops;

26.4.603, ARM, Introduction and subsection (9), (30 CFR 816.49/817.49), embankments;

26.4.605, ARM, subsection (3)(a)(i), (30 CFR 816.151/817.151), hydrologic impact of roads and railroad loops;

26.4.623, ARM, subsection (2)(b)(iii), (30 CFR 816.64/817.64), blasting schedule;

26.4.633, ARM, subsection (2), (30 CFR 816.46/817.46), water quality performance standards;

26.4.634, ARM, subsections (1) and (2), (30 CFR 816.102 / 817.102), reclamation of drainages;

26.4.638, ARM, subsection (2)(a), (30 CFR 816.45(b)(1)/817.45(b)(1)), sediment control measures;

26.4.639, ARM, subsections (1), (10)(c), and (18), Introduction, (30 CFR 816.46(b)(4) and (c)(2)/817.46(b)(4) and (c)(2), and 30 CFR 816.49(a)(2) and (a)(11)/817.49(a)(2) and (a)(11)), sedimentation ponds and other treatment facilities;

26.4.642, ARM, subsections (5) and (8), (30 CFR 816.49/817.49 and 816.84/817.84), permanent and temporary impoundments;

26.4.702, ARM, subsection (4), (30 CFR 780.23(a)(2)/784.15(a)(2)), redistribution and stockpiling of soil;

26.4.711, ARM, subsection (6), (30 CFR 816.116/817.116), establishment of vegetation;

26.4.927, ARM, subsection (2)(c), (30 CFR 816.71/817.73), disposal of underground development waste: durable rock fills;

26.4.932, ARM, subsection (8)(a)(ii), (30 CFR 816.81(a)/817.81(a) and 816.83/817.83), disposal of coal processing waste;

26.4.1002, ARM, subsections (1) and (2), (30 CFR 815.1 and 816.10/817.10), information and monthly reports;

26.4.1005, ARM, subsection (3), (30 CFR 815.15(g)), drill holes;

26.4.1006, ARM, subsections (2) through (4), (30 CFR 815.15, 816.150/817.150, 816.180/817.180 and 816.181/817.181), roads and other transportation facilities;

26.4.1007, ARM, subsection (1), (30 CFR 815.15(c)), grading, soil salvage, storage, and redistribution;

26.4.1009, ARM, subsection (2), (30 CFR 816.43/817.43), diversions;

26.4.1011, ARM, subsection (1), (30 CFR 772.11, 772.12, 772.13 and 815.15), hydrologic balance;

26.4.1116, ARM, subsection (7)(c), (30 CFR 800.40), bonding: criteria and schedule for release of bond;

26.4.1116A, ARM, subsections (1) and (2), (30 CFR 700.11), reassertion of jurisdiction;

26.4.1141, ARM, subsection (3), (30 CFR 762.5), designation of lands unsuitable: definition;

26.4.1212, ARM, subsection (1), (30 CFR 845.13(b)(1)), point system for civil penalties and waivers.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. ARM 26.4.301(78), 26.4.303, 26.4.404(7) Through (10), 26.4.405(5), 26.4.405A, 26.4.405B, and 26.4.1206(1); Ownership and Control

Montana proposed numerous revisions to its regulatory program concerning ownership and control. These revisions were submitted in response to two Part 732 letters sent to Montana by OSM on May 11, 1989 and January 13, 1997 (Administrative Record Nos. MT–60–04 and MT–60–09). Many of these revisions were found to be no less effective than the corresponding Federal regulations. However, during the evaluation of SPATS No. MT–003–FOR, OSM again revised its ownership and control regulations in response to recent legal challenges contesting the validity of OSM's regulations. The final rule **Federal Register** notice concerning OSM's revised regulations was published on December 19, 2000 (65 FR 79582). In the future, OSM will send a current Part 732 letter to all States, according to the requirements of 30 CFR 732.17(d), to advise the States of ownership and control revisions which they need to make to their State regulatory program. Therefore, at this time, OSM defers on Montana's proposed revisions concerning ownership and control. The sections of the Administrative Rules of Montana (ARM) where a decision is being deferred, are: ARM 26.4.301(78); 26.4.303 Introduction, (1), (6) through (8), (13) through (15), (20) through (24); 26.4.404(7) through (10); 26.4.405(5); 26.4.405A; 26.4.405B; and 26.4.1206(1).

D. ARM 26.4.301(120), Definition of ''Test Pit''

OSM placed a required program amendment (30 CFR 926.16(b)) on Montana in the May 11, 1990, **Federal Register** notice (55 FR 19727) to revise the definition of ''test pit'' to eliminate the phrase ''or for the purpose of developing a test market.'' OSM placed the required program amendment on the Montana program as the Federal counterpart regulations for coal exploration at 30 CFR 772.14(b) allow for the extraction of more than 250 tons of coal under an exploration permit if the coal is intended for testing purposes only. There is no Federal provision for using coal extracted under an exploration permit for developing a market.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed a revision at ARM 26.4.301(120) to revise the definition of ''test pit'' to delete the phrase ''or for the purpose of developing a test market.'' Therefore, the Director finds the Montana revised rule to be no less effective than the Federal requirement and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(b).

E. ARM 26.4.304(5), (6)(a), and (6)(b), Baseline Information: Environmental Resources

Montana proposed to move the requirements for groundwater baseline information from ARM 26.4.304(5) to revised ARM 26.4.304(6)(a)(ii), and to revise the surface water baseline information requirements at ARM 26.4.304(6)(b)(ii)(B). Montana proposed to delete from ARM 26.4.304(6)(a)(ii) and 26.4.304(6)(b)(ii)(B), the need to provide baseline information for ''total iron and total manganese,'' and to add the requirement that the applicant provide baseline information for both surface and groundwater concerning ''concentrations of dissolved metals as prescribed by the department.'' In addition, Montana proposed to delete from ARM 26.4.304(6)(b)(ii)(B) the requirement for surface water baseline information concerning acidity and alkalinity.

The Federal regulations at 30 CFR 780.21(b)(1) and (2)/784.14(b)(1) and (2) concerning baseline information for surface water and groundwater information require: (1) Total iron and total manganese, and (2) acidity and alkalinity, if there is a potential for acid drainage from the proposed mining operation. The Federal regulation at 30 CFR 732.15(a) requires the States to provide program elements that are in accordance with the provisions of SMCRA and consistent with the requirements of the Federal regulations.

In the February 6, 1996, response (Administrative Record No. MT–12–18), Montana stated that OSM's requirements for total iron, total manganese, and acidity analyses are based upon eastern U.S. problems and do not typically relate to areas where coal mining operations currently exist in Montana with a predominance of alkaline conditions. OSM had requested in the October 17, 1995, and July 10, 1997, letters that Montana provide documentation supporting Montana's characterization of alkaline coal fields, such as a compilation of historic surface-water and overburden sampling information from coal mining permits, or geological reports of analyses conducted over the coal mining regions of Montana in order to approve the proposed deletion of total iron, total manganese, acidity and alkalinity as parameters for surface water baseline information (Administrative Record Nos. MT–12–16 and MT–12–20).

Montana did not initially provide such documentation but responded by letter dated February 6, 1996, that: (1) OSM's requirements for iron, manganese, alkalinity and acidity are based upon eastern U.S. problems and Montana conditions are alkaline; (2) Montana has the authority at ARM 26.4.304(5)(a)(ii) and (b)(ii)(B), and ARM 26.4.304(5)(d) to request additional analyses as needed; (3) Montana's Water Resource Guidelines, currently being revised, provide guidance for water analyses; and (4) OSM could impose additional analyses on Federal lands permits when they are reviewed, if OSM believes additional water analyses are needed (Administrative Record No. MT–12–19).

Following the meeting in Helena, Montana, on February 27, 2001, Montana submitted a letter dated May 15, 2001, containing surface water quality data documenting alkaline conditions at five mine areas in Montana (Administrative Record No. MT–12–25). This documentation is representative of surface conditions in Montana. With this information, OSM can approve Montana's proposed deletions to groundwater baseline information and surface water baseline information, as no less effective than the Federal regulations. The Director approves these revisions.

F. ARM 26.4.314(5), Protection of the Hydrologic Balance

At ARM 26.4.314(5), Montana proposed to delete the word ''probable'' from the requirement to provide an assessment of the ''probable cumulative hydrological impacts.'' As both SMCRA section 510(b)(3) and 30 CFR 780.21(g)(1)/784.14(g)(1) require that an applicant provide an assessment of the ''probable cumulative hydrologic impacts'' of the proposed operation, OSM requested that Montana explain the deletion of the term ''probable.'' Montana responded that the term ''probable cumulative hydrologic

impacts'' is undefined in the Montana rules, while ''cumulative hydrologic impacts'' is defined. Montana further stated that ''cumulative hydrologic impacts'' in the Montana program includes ''expected'' impacts, which has the same connotation as ''probable.'' With this explanation, the Director approves the proposed revision to ARM 26.4.314(5) as no less effective than the Federal regulation and no less stringent than SMCRA.

G. ARM 26.4.321(1) and (3), Transportation Facilities Plan

OSM placed required program amendments (30 CFR 926.16(e)(3) and (e)(4)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436). The required program amendment at 30 CFR 926.16(e)(3) required Montana to modify its program to specify certification content requirements no less effective than 30 CFR 780.37(b)/784.24(b). The required program amendment at 30 CFR 926.16(e)(4) required Montana to incorporate application requirements no less effective than 30 CFR 780.37(a)(2), (3), and (6)/784.24(a)(2), (3), and (6). OSM placed the required program amendments on the Montana program as the revisions proposed in the June 19, 1990, submittal (Administrative Record No. MT–7–01) did not address these Federal counterpart provisions.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana subsequently proposed rule revisions at ARM 26.4.321 which addressed the certification content requirements and application requirements for the mining operations and reclamation plan portions of applications for permits for both surface and underground mining activities. OSM found that these Montana ARM revisions addressed earlier programmatic deficiencies identified at 30 CFR 926.16(e)(3) and (e)(4). Therefore, the Director finds the Montana revised rules to be no less effective than the Federal requirements and approves the proposed language. The Director removes the required program amendments at 30 CFR 926.16(e)(3) and (e)(4).

H. ARM 26.4.404(5)(b), Review of Application: Properties Listed on or Eligible for Listing on the National Register of Historic Properties

OSM placed a required program amendment (30 CFR 926.16(c)) on Montana in the May 11, 1990, **Federal Register** notice (55 FR 19727) to revise ARM 26.4.404(5)(b) to require that a determination of effects is completed for all properties listed on or eligible for listing on the National Register of Historic Properties (NRHP). OSM placed the required program amendment on the Montana program as the proposed revision to ARM 26.4.404(5)(b) applied to ''all listed eligible cultural resource sites'' rather than to ''properties listed on or eligible for listing on the NRHP,'' as required by the Federal regulation at 30 CFR 773.15(c)(11).

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana revised ARM 26.4.404(5)(b) to read ''all listed or eligible cultural resource sites in accordance with 30 CFR 800.'' 36 CFR 800 applies to the Advisory Council on Historic Preservation and properties listed on or eligible for listing on the NRHP. Therefore, the Director finds the Montana revised rule to be no less effective than the Federal regulation and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(c).

I. ARM 26.4.405(6)(1), Findings and Notice of Decision

OSM placed a required program amendment (30 CFR 926.16(d)) on Montana in the May 11, 1990, **Federal Register** notice (55 FR 19727) to change the cross-reference at ARM 26.4.405(6)(l) to ARM 26.4.1302, which governs the use of existing structures, rather than deleted rule ARM 26.4.309. In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed a rule revision correcting the incorrect cross-reference to ARM 26.4.1302. Therefore, the Director finds the revised rule at ARM 26.4.405(6)(l) to be no less effective than the Federal requirement and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(d).

J. ARM 26.4.407(4), Conditions of Permit

At ARM 26.4.407(4), Montana proposed to require as a condition of each permit that a permittee, within 30 days of issuance of a cessation order under the Federal or State program, must provide the department with certain specified information except ''where a state cessation order is granted and remains in effect.'' The Federal counterpart at 30 CFR 773.17(i) is similar to Montana's proposal except that the Federal provision allows an exception to the applicable requirement only ''where a stay of a cessation order has been granted and remains in effect.''

In response to OSM's comment in the formal issue letter dated October 17, 1995 (Administrative Record No. MT–12–16) that Montana needed to revise ARM 26.4.407(4) to allow an exception to the requirements of the rule only where ''a stay of a cessation order has been granted and is in effect,'' Montana stated that the typographical error would be corrected (Administrative Record No. MT–12–19). By letter dated May 25, 2001, Montana submitted a revision to OSM which corrected the typographical error at ARM 26.4.407(4) to read ''a stay of the cessation order has been granted'' (Administrative Record No. MT–12–25). With this information, the Director finds ARM 26.4.407(4) to be no less effective than the Federal counterpart and approves the revision.

K. ARM 26.4.505(4) Through (8), Burial and Treatment of Waste Materials and Disposal of Off-Site-Generated Waste and Fly Ash

a. Burial and Treatment of Waste Materials

Montana proposed revisions at ARM 26.4.505 in response to a requirement which OSM codified at 30 CFR 926.16(e)(2) to incorporate requirements for the disposal of waste, including coal mine waste on strip mines, in a manner no less effective than the requirements at 30 CFR 816.102(e)/817.102(e) and 816.81/817.81 through 816.84/817.84. OSM placed the required program amendment on the Montana program as the revised definition of ''waste'' at ARM 26.4.301(132), now (133), included coal processing waste to be disposed of on surface mining operations which are governed by ARM 26.4.505 and 26.4.510. However, ARM 26.4.505 and 26.4.510 regulate surface mining operations; coal processing waste is not addressed at these rules. Existing language and proposed revisions at ARM 26.4.505(3) and (4) prohibit waste disposal in the construction of embankments for impoundments and in a waste disposal structure located on the surface of the ground. Therefore, the requirements of 30 CFR 816.84(a)/817.84(a) pertaining to impounding structures constructed of coal mine waste and the requirements of 30 CFR 816.83/817.83 for disposal of coal mine waste in refuse piles, are not addressed in the Montana program at 26.4.505 and 26.4.510. The Federal regulations require that any disposal of coal mine waste, whether in impounding structures or in excavated areas of strip mines, must meet the general requirements of 30 CFR 816.102(e)/817.102(e) and 816.81/817.81.

OSM told Montana in its October 17, 1995, letter (Administrative Record No. MT–12–16) that in order to be no less effective than the Federal regulations, Montana must revise ARM 26.4.505 to

include the following requirements: (1) Waste should be hauled or conveyed and placed in controlled manner to achieve the purposes itemized in 30 CFR 816.81(a)(1) through (5)/817.81(a)(1) through (5); (2) design and design certification, and foundation and abutment stability under all conditions of construction, should be in accordance with 30 CFR 816.81(c)/817.81(c); and (3) foundation investigations should be in accordance with 30 CFR 816.81(d)/817.81(d).

Montana responded in a letter dated February 6, 1996 (Administrative Record No. MT–12–19), stating that waste disposal in structures outside of mine excavations is prohibited at surface mines in Montana's program, and that Montana has the necessary requirements for underground mines. Montana has no coal preparation plants. Therefore, the disposal of coal processing waste in structures outside of mine excavations does not need to be addressed in the Montana program. Montana desires to dispose of coal processing waste in excavation pits.

There are no Federal regulations prohibiting the disposal of coal processing waste in excavation pits. Therefore, the Montana proposed rules are not inconsistent with the Federal regulations and the Director approves the proposed Montana revisions at ARM 26.4.505 and 26.4.510. The Director removes the required program amendment at 30 CFR 926.26(e)(2).

b. Temporary Waste Impoundments

During the review of proposed ARM 26.4.505(5), OSM identified deficiencies relating to the lack of: (1) a requirement that any temporary impoundment of waste which includes coal mine waste must meet the general requirements of ARM 26.4.505, in addition to those specified in paragraph (5); (2) a requirement for adequate protection against erosion and corrosion for outlet works; (3) a requirement that the diversion of runoff from above or off of the impounding structure be in accordance with 30 CFR 816.84(d)/817.84(d); and (4) a requirement for design and performance criteria for removal of 90 percent of the water stored during the design event within the 10 day period following the event in accordance with 30 CFR 816.84(e) and (f)/817.84(e) and (f) (Administrative Record No. MT–12–16).

Montana responded to OSM's deficiency list by: (1) Stating that paragraph (2) also pertains to coal waste impoundments and that Montana will add another subsection to (5) indicating that acid, toxic, acid-forming, and toxic-forming wastes may not be included in temporary waste impoundments; (2) stating that Montana will add the term ''outlet works'' to (5)(c); and (3) referencing sections in the State program which correspond to 30 CFR 816.84(d), (e), and (f)/817.84(d), (e), and (f) (Administrative Record No. MT–12–19).

OSM responded to Montana by letter dated July 10, 1997, stating that: (1) ARM 26.4.505(7) needed to be cross-referenced under ARM 26.4.505(5) to assure that emergency procedures would apply to temporary impoundments; and (2) Montana's proposal to rewrite ARM 26.4.505 to prohibit the inclusion of acid- and/or toxic-forming materials in temporary impoundments would assure that its program is no less effective than the Federal regulations.

Following OSM's meeting with Montana on February 27, 2001, Montana submitted the proposed revisions at ARM 26.4.505(5)(c) through (5)(e) and (7) to OSM by letter dated May 15, 2001 (Administrative Record No. MT–12–25). The proposed revisions assure that emergency procedures would apply to temporary impoundments and would prohibit the inclusion of acid- and/or toxic-forming materials in temporary impoundments. The Director, therefore, finds that the deficiencies at ARM 26.4.505 have been addressed and Montana's proposed revisions are no less effective than the Federal counterpart regulations. The Director approves revised ARM 26.4.505.

c. Disposal of Offsite-Generated Waste and Fly Ash

During the review of the burial and treatment of waste materials (at Finding No. 11a above), OSM raised an issue concerning the impact of the revisions at ARM 26.4.505. ARM 26.4.505 is cross-referenced at ARM 26.4.510(1) for the disposal of offsite-generated waste and fly ash. OSM's concern was that the requirements of 30 CFR 816.81(b)/817.81(b), which require that coal mine waste material from activities located outside a permit area may be disposed of in the permit area—if it is done with the approval of the regulatory authority—based upon a showing that the disposal would be in accordance with the standards of 30 CFR 816.81(b)/817.81(b), would not be met. However, with the resolution of Finding No. 11a above, OSM believes that the concerns with ARM 26.4.505 and 26.4.510 are resolved as they relate to the disposal of coal mine waste material from activities located outside a permit area.

L. ARM 26.4.519A, Thick Overburden and Excess Spoil

Montana proposed to delete at ARM 26.4.519A the requirement that all highwalls and depressions in thick overburden must be eliminated with spoil and suitable waste materials unless otherwise approved by the Montana DEQ in accordance with ARM 26.4.313(3) and 26.4.821 through 26.4.824. The Federal counterpart requirement to eliminate highwalls and depressions is contained at 30 CFR 816.102(a)(2)/817.102(a)(2). The deleted Montana cross-references concern the reclamation plan and Montana's programmatic allowance for alternate reclamation.

The general programmatic requirement to eliminate all highwalls and depressions used to be contained in the Montana program at ARM 26.4.501A(1). However, in 1999, this programmatic requirement was deleted from the Montana program by the State legislature. OSM has not received the revised Montana rules to evaluate if this requirement is contained elsewhere in the revised program, particularly in light of the proposed deletion at ARM 26.4.519A. Therefore, at this time, the Director defers on the proposed deletion at ARM 26.4.519A until a current rulemaking is submitted by Montana and evaluated by OSM.

M. ARM 26.4.603(9) and 26.4.639(18)(b), Sedimentation Ponds and Other Treatment Facilities; Construction of Sedimentation Ponds Which Meet the Criteria of 30 CFR 77.216A

Montana proposed at ARM 26.4.639(18) to delete the 1.2 seismic safety factor and 1.5 static safety factor requirements for sedimentation ponds that meet the criteria of 30 CFR 77.216(a). At ARM 26.4.603(9), Montana proposed to add 1.2 seismic safety factor and 1.5 static safety factor requirements for the construction of all embankments. The Federal requirement at 30 CFR 816.49(a)(3)(i)/817.49(a)(3)(i) specifies that for all temporary or permanent impoundments (including sedimentation ponds) that meet the criteria of 30 CFR 77.216(a), a 1.2 seismic safety factor and 1.5 static safety factor must be achieved.

Because ARM 26.4.642(2) references ARM 26.4.603, and because a sedimentation pond is defined as an ''impoundment'' in ARM 26.4.301, OSM asked Montana if ARM 26.4.603(9) would apply to all sedimentation ponds and impoundments, regardless of size and temporal nature. In the February 6, 1996, letter, Montana responded that OSM's interpretation was correct in that

ARM 26.4.603(9) applies to all sedimentation ponds regardless of size or nature (Administrative Record No. MT–12–19). With this explanation, the Director approves the revisions at ARM 26.4.639(18)(b) and 26.4.603(9) as no less effective than the Federal regulations.

N. ARM 26.4.639(10)(b) and (19), Sedimentation Ponds and Other Treatment Facilities: Construction of Sedimentation Ponds and Certification of Impoundments

a. Types of Materials Used for Spillways and Limits on the Duration of Spillway Discharges

At ARM 26.4.639(10)(a), Montana proposed to allow sedimentation ponds to be constructed with either a ''single spillway'' or a combination of principal and emergency spillways. The counterpart Federal regulation at 30 CFR 816.46(c)(2)(i)/817.46(c)(2)(i) allows for a single open-channel spillway if configured as specified at 30 CFR 816.49(a)(9)/817.49(a)(9). The Federal regulation also provides that the regulatory authority may approve a single open-channel spillway that is of nonerodible construction and designed to carry sustained flows, or earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities, where sustained flows are not expected. OSM notified Montana that it must further revise proposed ARM 26.4.639(10)(a) to allow for a single open-channel spillway only if it is of nonerodible construction and designed to carry sustained flows, or earth-or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected.

By letter dated February 6, 1996, Montana responded that it would add language at ARM 26.4.639(10)(a) indicating the types of materials that may be used for spillways and the limits on the duration of spillway discharges, depending on materials used (Administrative Record No. MT–12–19). Montana submitted the proposed language in their May 15, 2001, response (Administrative Record No. MT–12–25). This proposed language is no less effective than the Federal regulation at 30 CFR 816.49(a)(9)/817.49(a)(9) and the Director approves ARM 26.4.639(10)(a).

b. Special Impoundment Certification by an Engineer

At ARM 26.4.639(10)(b), Montana proposed to allow additional criteria for sedimentation ponds which do not meet the requirements of the Mine Safety and Health Administration (MSHA) at 30 CFR 77.216(a) and which rely primarily on storage to control runoff from the design precipitation event. The Federal regulations at 30 CFR 816.49(c)(2)(iii)/817.49(c)(2)(iii) require that the operator demonstrate and that a qualified registered professional engineer certify that the pond will safely control the design precipitation event, prior to the approval of a pond that relies on storage to control precipitation. OSM interpreted this revision as being no less effective than the Federal regulations. However, OSM also interpreted Montana's rules as having no counterpart to the Federal requirement that MSHA-sized impoundments be demonstrated and certified by a qualified registered professional engineer that the pond would control a design precipitation event. OSM requested in its October 17, 1995, letter that Montana revise ARM 26.4.639(10)(b) to include such demonstration and certification criteria (Administrative Record No. MT–12–16).

Montana responded by letter dated February 6, 1996, that all ponds, including those which use containment in lieu of a spillway, are covered by the certification requirements of ARM 26.4.639(19) (Administrative Record No. MT–12–19). With this clarification, OSM finds proposed ARM 26.4.639(10)(b) to be no less effective than the Federal regulations. The Director approves this revision.

c. Applicable Montana Storm Event

At ARM 26.4.639(10)(b), Montana proposed to require that an impounding structure relying primarily on storage be designed to contain a 25-year, 24-hour design event, or greater event as specified by the department. The counterpart Federal regulation at 30 CFR 816.46(c)(2)(ii)(B)/817.46(c)(2)(ii)(B) requires that the minimum design be for a 100-year, 6-hour storm event. Because ARM 26.4.639(10)(b) allows for an impounding structure that may contain a smaller design event than the Federal regulations, OSM told Montana that the proposed rule was less effective than the Federal counterpart. OSM suggested that Montana either revise proposed ARM 26.4.639(10)(b) to require containment of a 100-year, 6-hour storm event, or demonstrate that the 25-year, 24-hour storm event produces greater volumes than does the 100-year, 6-hour storm event, in order to be no less effective than the Federal regulation.

Montana's narrative response provided data demonstrating that in all cases the precipitation from the 25-year, 24-hour storm exceeds that of the 100-year, 6-hour storm (Administrative Record No. MT–12–19). In addition, OSM previously approved Montana's use of the 25-year, 24-hour storm event, in lieu of the 100-year, 6-hour storm event, with respect to surface runoff diversions related to refuse piles and coal mine waste impoundments, in the August 19, 1992, **Federal Register** notice concerning SPATS No. MT–04-FOR (Administrative Record No. MT–7–27; 57 FR 37436). With this demonstration, OSM finds that the Montana rule provides for adequate containment for the run-off from a 100-year, 6-hour storm event and OSM's concern is resolved. The Director finds ARM 26.4.639(10)(b) to be no less effective than the Federal regulation and approves the Montana revision.

O. ARM 26.4.639(22), Removal of Sedimentation Ponds and Other Treatment Facilities

At ARM 26.4.639(22)(a)(i), Montana proposed to delete the need for a drainage basin to be stabilized prior to early removal of ponds and treatment facilities (sooner than 2 years) and to delete the cross-reference to meeting the requirements at ARM 26.4.711 through 26.4.735. Montana stated that ARM 26.4.633, which is cross-referenced, covers these requirements. At ARM 26.4.639(22)(a)(ii), Montana proposed to delete the cross-reference to ARM 26.4.735 and revise it to read 26.4.733. This is because ARM 26.4.734 and 26.4.735 no longer exist in the Montana program.

OSM agrees that the counterpart Federal requirements for 30 CFR 816.46(b)/817.46(b) are contained at ARM 26.4.633. However, OSM reviewed and approved the striking of this same language in a final rule **Federal Register** notice dated May 11, 1990 (55 FR 19727; Administrative Record No. MT–5–48). OSM sees no need to approve the deletion of the language at ARM 26.4.629(22)(a)(i) since we have already done so.

P. ARM 26.4.645(6) and 26.4.646(6), Groundwater and Surface Water Monitoring

Montana proposed to add the requirement at ARM 26.4.645(6) and 26.4.646(6) that sampling and water quality analyses be conducted according to the methodology in the 15th edition of ''Standard Methods for Examination of Water and Wastewater'' or 40 CFR Parts 135 and 434, and ''the department of health and environmental sciences document entitled 'Circular WQB–7, Montana Numeric Water Quality Standards' dated April 4, 1994.'' Montana also proposed deleting the

option to elect methodology in Standard Methods when conducting surface water monitoring.

OSM responded that the addition of the State-specific requirement was acceptable as long as Circular WQB–7 did not conflict with any of the provisions of ''Standard Methods for Examination of Water and Wastewater'' or the provisions of 40 CFR parts 136 and 434. Following a review of Circular WQB–7, OSM found it was not in conflict with 40 CFR Parts 136 and 434, or ''Standard Methods for Examination of Water and Wastewater.''

However, Circular WQB–7 is currently being revised. In the near future, Montana intends to submit revised programmatic rules with a more current version of Circular WQB–7 cross-referenced. Therefore, the Director defers a decision on ARM 26.4.645(6) and 26.4.646(6), at this time, until Montana's new rules are submitted and a current version of Circular WQB–7 is reviewed.

Q. ARM 26.4.721 (1), (2) and (3), Eradication of Rills and Gullies

At ARM 26.4.721, Montana proposed to delete the 9-inch standard for determining repair of rills and gullies and to state that for ''extensive rill or gully erosion, the department may require submittal of a plan of mitigation for such features and department approval prior to implementation of repair work.'' The Federal regulations at 30 CFR 816.95(b)/817.95(b) require, under certain circumstances, that rills and gullies be filled, regraded, and stabilized with the topsoil replaced and the area reseeded and replanted. As ARM 26.4.721 included the same requirements as the Federal regulations, with the exception of the need to replace the topsoil, OSM asked Montana to verify that ARM 26.4.702 would provide for soil (topsoil) redistribution to replace topsoil during the repair of rills and gullies.

In the February 6, 1996, response (Administrative Record No. MT–12–19), Montana stated that ARM 26.4.702 is used for soil redistribution in the repair of rills and gullies in situations where soil replacement was included in the original reclamation plan. Montana stated that in some cases, redistribution has included the reuse of the eroded soil materials, or in other cases, redistribution has included the use of ''new'' soil materials such as surface soils. In the case of soil substitutes, such materials as spoils or scoria rock would be used to repair rills and gullies. With this explanation, the Director approves the Montana revision at ARM 26.4.721 as no less effective than the Federal regulations.

R. ARM 26.4.724(6), Use of Revegetation Comparison Standards

Montana proposed to delete the requirement at ARM 26.4.724(6) which allowed the success of revegetation of less than 100 acres to be based on United States Department of Agriculture (USDA) or United States Department of the Interior (USDI) technical guides, when the 100 acres was not a segment of a larger area proposed for disturbance by mining. There is no current Federal equivalent to this provision. There used to be a Federal provision at 30 CFR 816.116(a)/817.116(a) to allow the regulatory authority to measure revegetation success through the use of technical guidance from the USDA or the USDI. However, this provision was abolished in the September 2, 1983, OSM rulemaking concerning revegetation (**Federal Register** 48 FR 40160).

Due to the fact that there is no current Federal counterpart provision to the deleted Montana rule, the Director finds that the Montana program remains no less effective than the Federal regulations and no less stringent than SMCRA with this deletion. The Director approves this deletion.

S. ARM 26.4.726 (2) and (3), Vegetation Production, Cover, Diversity and Utility Requirements

Montana proposed to revise ARM 26.4.726 (2) and (3) to read ''live cover'' instead of ''cover.'' At 30 CFR 816.116(a)(2)/817.116(a)(2), the Federal regulations use the term ''ground cover'' for the evaluation of revegetation success. Ground cover is defined as the area of the ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite.

''Live cover'' is a subset of ''ground cover'' as defined by the Federal regulations. By allowing only the use of ''live cover'' in evaluating compliance with the revegetation success standards, Montana is not allowing the use of litter in evaluating revegetation success. Montana has proposed stricter vegetative standards by which to sample and evaluate revegetated areas. Therefore, the Montana standard is more stringent than the Federal counterpart. The Director finds proposed ARM 26.4.726(2) and (3) to be no less effective than the Federal regulation and approves the revision.

T. ARM 26.4.821(1)(g), Alternate Reclamation: Submission of Plan

At ARM 26.4.821(1)(g), Montana proposed to allow the use of ''technical standards derived from historical data'' for evaluating revegetation success for alternate reclamation, which includes land reclaimed for use as special use pasture and cropland. The approved State program establishes conditions for the use of technical standards derived from historical data at ARM 26.4.724(5). The conditions include the specification that: (1) The data must come from the premine area or from an area that exhibits comparable cover, production, diversity, density, and utility as well as comparable management, soil type, topographic setting, and climate in comparison to those of the premine area; and (2) the data must be generated for a sufficient period of time to encompass the range of climatic variations typical of the premine or other appropriate area, or data generated from the revegetated area. Areas must be compared to historical data generated only during climatic conditions comparable to those conditions existing at the time revegetated areas are sampled. Historical records must be established for each plant community that will be compared to specific reclaimed area plant communities.

The Federal regulations at 30 CFR 816.116(a)(2)/817.116(a)(2) state that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, and stocking. For grazing land, pastureland, or cropland, the Federal regulations at 30 CFR 816.116(b)(1) and (2)/817.116(b)(1) and (2) allow the use of reference areas or such other success standards approved by the regulatory authority for evaluating revegetation success. OSM has previously approved the use of technical standards derived from historical data for evaluating revegetation success on grazing land in Montana (March 21, 1991, **Federal Register**; 56 FR 11666). Further, the conditions set for use of technical standards derived from historical data by Montana ensure that the requirements of 30 CFR 816.116(a)(2) /817.116(a)(2) are met. Therefore, use of technical standards is acceptable for evaluating special use pastureland and ''cropland. The Director finds that the proposed revision at ARM 26.4.821(1)(g), concerning the use of technical standards derived from historical data for setting revegetation success standards on cropland and special use pasture, is not inconsistent

with and is no less effective than the Federal regulations. The Director approves the revision.

U. ARM 26.4.825(4)(a) and (c) and (6), Alternate Reclamation: Alternate Revegetation

Montana proposed to revise ARM 26.4.825(4)(a) and (c) and (6) to read ''cropland'' instead of ''hayland.'' The Federal regulations at 30 CFR 701.5 define cropland to include land used for hay crops, which is the same as hayland.

ARM 26.4.825 requires that all mined lands must be returned to a postmining land use of grazing land and fish and wildlife habitat. Any other postmining land use is considered to be alternate reclamation. The effect of the proposed change at ARM 26.4.825(4)(a) is to require that if the proposed land use is special use pasture, then the area must have a 5 year history of being utilized as special use pasture or cropland. The State may allow deviations in the location of special use pastures from the exact location of premining special use pasture or cropland (rather than hayland). There is no Federal counterpart to this Montana rule. While the definition of cropland is broader than hayland, the proposed change does not render the State program less effective than the Federal regulations.

The proposed change at ARM 26.4.825(4)(c) exempts pastureland from ARM 26.4.724(1), the establishment of native plant community reference areas, and ARM 26.4.728, which requires a predominant composition of native species.

The definition of pastureland at 30 CFR 701.5 states that it consists of land primarily used for the long-term production of domesticated forage plants. 30 CFR 816.116(b)(1) / 817.116(b)(1) allows either the use of reference areas or such other success standards which are approved by the regulatory authority. Although there is no direct Federal equivalent to ARM 26.4.825(4)(c), the Montana revision is not inconsistent with and is no less effective than the Federal regulations.

The effect of the revision at ARM 26.4.825(6) is to require enhancement of wildlife values and protection of wetlands when special use pasture or cropland is proposed. The Federal counterparts at 30 CFR 816.97(f) and (h)/817.97(f) and (h) likewise provide for the enhancement of wildlife values and wetland preservation and restoration. Therefore, the proposed revision is no less effective than the Federal regulations. The Director approves all revisions to ARM 26.4.825.

V. ARM 26.4.924(15), Disposal of Underground Development Waste: General Requirements, and ARM 26.4.927(3)(a), Disposal of Underground Development Waste: Durable Rock Fills

Montana proposed to revise ARM 26.4.927(3)(a) by requiring that the design of a durable rock fill include an internal drainage system ''in accordance with ARM 26.4.924(14) or (15).'' ARM 26.4.924(14), later recodified as (15), would allow for an alternative underdrain system. This is not allowed in the Federal counterparts at 30 CFR 816.71(f)(3)/817.71(f)(3), 816.73/817.73, 816.83(a)(3)/817.83(a)(3), and 816.102(e)/817.102(e).

In OSM's July 10, 1997, issue letter, we informed Montana that the cross-reference to ARM 26.4.924(14) would need to be deleted in order for ARM 26.4.927(3)(a) to be no less effective than the Federal regulations (Administrative Record No. MT–12–20). OSM reminded Montana that this provision was never part of the approved program. OSM told Montana in the August 19, 1992, **Federal Register** (57 FR 37436), when the provision was first proposed, that it could not approve ARM 26.4.924(14), subsequently (15). OSM codified at 30 CFR 926.16(e)(9) the requirement that Montana remove the provision at ARM 26.4.924(14) from its program.

By letter dated May 15, 2001, Montana submitted wording to OSM which deleted the provision at ARM 26.4.924(15) and cross-reference to it at ARM 26.4.927(3)(a) (Administrative Record. No. MT–12–25). This deletion satisfies part of the requirement at 30 CFR 926.16(e)(9) and makes the Montana rules no less effective than the Federal regulations. The Director approves the revision but does not remove the required program amendment at 30 CFR 926.16(e)(9), as not all the requirements of (e)(9) have been met.

W. ARM 26.4.301(134) and 26.4.924(3), (4), (8), (9), (19), and (21), Disposal of Underground Development Waste: General Requirements

a. Definition of ''Waste Disposal Structure'' and Disposal of Underground Development Waste and Coal Processing Waste: Location Relative to Mine Excavations

OSM placed a required program amendment (30 CFR 926.16(e)(5)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436) to specify whether the waste disposal governed by ARM 26.4.924 and 26.4.932 was within or outside mine surface excavations, and to clarify what constituted a ''waste disposal structure.'' OSM placed the required program amendment on the Montana program due to the June 19, 1990, proposed revisions (Administrative Record No. MT–7–01) to ARM 26.4.924 and 26.4.932 which were not specifically directed either to disposal within mine surface excavations or to disposal outside mine excavations. OSM noted that the performance standards were the same for both, except for the required static safety factor.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed a definition of ''waste disposal structure'' at ARM 26.4.301(134) which stated that waste disposal structures are either composed of underground development waste or coal processing waste located outside of the mine workings and the surface area, and are other than impoundments or embankments. At ARM 26.4.924(3), Montana proposed similar wording to the general requirements for the disposal of underground development waste to clarify that underground development waste may not be placed in impoundments or embankments, to clarify the performance standards for the reclamation of waste disposal areas—including those relating to location, and to clarify that the disposal of underground waste into the spoils backfill of excavation areas must be in accordance with sections 3 and 20 of ARM 26.4.924.

Montana's revisions and clarification of the definition of a ''waste disposal structure,'' as well as the general requirements for the disposal of underground development waste, how they relate to the location of mine excavations, and which performance standards apply, assure that the program meets the Federal counterpart at 30 CFR 816.81/817.81 through 816.84/817.84. The Director finds the Montana rules to be no less effective than the counterpart Federal regulations and approves the revisions. The Director removes the required program amendment at 30 CFR 926.16(e)(5).

b. Disposal of Underground Development Waste: Requirements of the Mine Safety and Health Administration (MSHA)

OSM placed a required program amendment (30 CFR 926.16(e)(6)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436; Administrative Record No. MT–7–27) to amend ARM 26.4.924(4) to require that all non-impounding underground development waste disposal structures meet the MSHA requirements at 30 CFR 77.214 and 77.215, and to clarify what

constitutes a ''coal waste refuse structure.''

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana deleted the undefined term ''coal waste disposal structure'' and revised ARM 26.4.924(4)(b) to require that ''waste disposal structures'' must meet the requirements of 30 CFR 77.214 and 77.215. With this revision, the Director finds the Montana revised rule to be no less effective than the Federal regulation and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(e)(6).

c. Disposal of Underground Development Waste, General Requirements: Covering With Non-Toxic Material

OSM placed a required program amendment (30 CFR 926.16(e)(7)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436) to incorporate a requirement no less effective than 30 CFR 816.83(c)(4)/817.83(c)(4) which concerns the covering of refuse piles with non-toxic materials.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana proposed new language at ARM 26.4.924(9) which requires that waste disposal structures be covered with four feet of non-toxic and non-combustible material following final grading. With this revision, the Director finds that Montana's requirements are no less effective than the Federal requirements at 30 CFR 816.83(c)(4)/817.83(c)(4) and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(e)(7).

X. ARM 26.4.930(3), Placement and Disposal of Coal Processing Waste: Special Application and Requirements

OSM placed a required program amendment (30 CFR 926.16(e)(8)) on Montana in the August 19, 1992, **Federal Register** notice (57 FR 37436) to add application requirements to ARM 26.4.930 which are no less effective than 30 CFR 780.25(e) and (f)/784.16(e) and (f). OSM placed the required program amendment on the Montana program due to the absence of requirements that specify detailed application and design requirements for coal processing waste impoundments. Specifically, the construction of impoundments from coal processing waste behind embankments constructed of other materials was not prohibited in the Montana program.

In the February 1, 1995, submittal (Administrative Record No. MT–12–01), Montana rectified this omission by cross-referencing the requirements at ARM 26.4.505(5) which in turn cross-reference the requirements at ARM 26.4.603, 26.4.639, and 26.4.642. ARM 26.4.505(6) prohibits the retention of coal waste impoundments as part of the post-mining land use. Therefore, the Director finds the Montana revised rule to be no less effective than the Federal regulation and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(e)(8).

Y. ARM 26.4.932(5)(b), Disposal of Coal Processing Waste

At ARM 26.4.932(5)(b), Montana proposed to delete the statements that: (1) Inspections may terminate when the coal processing waste has been graded; (2) the provisions of subsection (9) have been met (which primarily concern cover with a minimum of four feet of non-toxic and non-combustible material); and (3) the soil has been distributed in accordance with the soil redistribution and stockpiling provisions at ARM 26.4.702. In the place of this statement, Montana has added a provision that inspections would be made in accordance with the critical construction schedule contained in ARM 26.4.924(19)(b). ARM 26.4.924(19)(b) requires that inspections be made at least quarterly and during critical construction periods, which include the following: (1) Foundation preparation; (2) underdrains and protective filter systems; (3) installation of final surface drainage systems; and (4) final grading and revegetation.

The Federal counterpart regulation concerning the inspection of coal mine waste at 30 CFR 816.83(d)/817.83(d) includes, in addition to the Montana provisions listed above, the requirements that inspections are conducted by a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer, there are more frequent inspections if a danger or harm exists to the public health and safety, a certified report made by the qualified, registered professional engineer to the regulatory authority promptly after each inspection, color photographs in the certified report of the drainage system and protective filters taken during and after construction but before coal mine waste covers the underdrains, and a copy of the report to be maintained at the minesite. These Federal requirements for the inspection of coal mine waste (30 CFR 816.83(d) and (d)(2) through (d)(4)/817.83(d) and (d)(2) through (d)(4)) are included in the Montana program at ARM 26.4.924(a), (c), (d), (e) and (f). However, Montana has only cross-referenced ARM 26.4.924(b).

Therefore, Montana needs to revise the cross-reference at ARM 26.4.932(5)(b) to read ''ARM 26.4.924'' in general, in order to be no less effective than the Federal counterpart regulations. Therefore, the Director defers on the approval of ARM 26.4.932(5)(b) at this time until Montana revises the cross-reference to read ''ARM 26.4.924.''

Z. ARM 26.4.1014, Test Pits

At ARM 26.4.1014, Montana proposed additional requirements for prospecting test pits. If the coal from a test pit is sold directly to, or commercially used directly by, the intended end user, or, if the coal is sold through a broker or agent, proposed ARM 26.4.1014(2)(c) required that a test pit permit application contain the information specified at proposed ARM 26.4.1014(2)(c)(i) through (iii).

The Federal regulations at 30 CFR 772.14 also provide for such use of coal from exploration operations. However, the Federal regulations at 30 CFR 772.14(b) require prior written approval by the regulatory authority that such sale or commercial use is for testing purposes, otherwise a permit to mine must be obtained.

Proposed ARM 26.4.1014 does not specifically require prior written approval from the State prior to use of the coal in this manner. OSM requested an interpretation from Montana that, because the ARM provisions in subchapter 4 are applicable to test pit permits, Montana's program provides for specific written approval prior to such use of coal obtained from prospecting test pits at ARM 26.4.1014 (Administrative Record No. MT–12–16). There is no specific reference to subchapter 4 for such an approval at ARM 26.4.1014.

For whatever reason, Montana did not respond to OSM with an interpretation that written approval from the State is required prior to sale or commercial use of coal from test pits for testing purposes, in the response dated February 6, 1996 (Administrative Record No. MT–12–19). In the absence of such an interpretation, and because the revision is otherwise no less effective than the Federal regulations, the Director approves ARM 26.4.1014 with the interpretation that Montana's program provides for specific written approval prior to the use of coal obtained from prospecting test pits.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment by letters dated February 8, 1995, and March 1, 1995 (Administrative Record Nos. MT–12–03 and MT–12–08). The Northern Plains Resource Council (NPRC) responded on April 14, 1995, with comments on the proposed revisions (Administrative Record No. MT–12–15) as follows:

1. ARM 26.4.304(6)(b)(ii)(A)

The NPRC had concerns that Montana omitted iron and manganese from testing in this subsection. OSM addressed similar issues at Finding No. 5 above.

2. ARM 26.4.501A(3)(a)

The NPRC commented that the change from two to four spoil ridges would result in a standard variance which would not promote reclamation as contemporaneously as possible and could result in adverse impacts. While OSM's regulation at 30 CFR 816.101(a)(2)/817.101(a)(2) is suspended indefinitely, OSM has had a four spoil ridge requirement off and on since 1979. We have no basis for finding that requiring regrading within four spoil ridges is not as contemporaneous as practicable. OSM finds Montana's rules to be no less effective than the Federal provisions at 30 CFR 816.100/817.100.

3. ARM 26.4.519A

The NPRC commented that revisions made to this section would ''eliminate all highwalls, with certain very limited exceptions * * *'' OSM believes that the NPRC intended to state ''delete the requirement to eliminate all highwalls.'' OSM also read Montana's revision as deleting a requirement to eliminate all highwalls and depressions with spoil and suitable waste materials, as well as the allowable exemption from that requirement, and to require that the operator demonstrate that the volume of spoil and suitable waste materials is more than sufficient to restore the disturbed area to approximate original contour (AOC). Montana explained in its February 6, 1996, letter (Administrative Record No. MT–12–19) that this revision was made to eliminate a redundancy with ARM 26.4.501A(1). However, since that time, Montana has eliminated ARM 26.4.501A(1) from its regulatory program. In the near future, Montana will submit its current regulatory program to OSM for evaluation of all revised rules, including the requirement to eliminate all highwalls and depressions with spoil and suitable waste materials. At this time, OSM is deferring on the proposed revision at ARM 26.4.519A.

The NPRC had concerns with ARM 26.4.515(2) and wondered if those rules were approved by OSM. OSM responds that approval of ARM 26.4.515(2) was deferred by OSM in the May 11, 1990, **Federal Register** notice (55 FR 19727; Administrative Record No. MT–5–48). A deferral means that a provision is unenforceable until Montana and OSM resolve the issues related to the rulemaking. Montana has since developed guidelines concerning approximate original contour and post-mining topography which it believes will address OSM's concerns with ARM 26.4.515(2). Those guidelines will be submitted in the near future to OSM.

4. ARM 26.4.623(2)(a)(iii)

Although the NPRC listed ARM 623.4.623(2)(a)(iii) as the rule in question, OSM believes that ARM 26.4.623(2)(a)(iii) is the correct cite. The NPRC objects to the change from a daily blasting period with a maximum of four hours per day to a maximum of eight hours per day. At the same time, the NPRC acknowledges that Montana has the right to impose more restrictive blasting conditions by the authority given to the States at 30 CFR 816.64(a)(2)/817.64(a)(2). Because Montana is complying with its responsibilities of 30 CFR 816.64(a)(2)/817.64(a)(2), OSM suggests that the NPRC address any on-the-ground concerns with blasting schedules to Montana.

5. ARM 26.4.639(10)

The NPRC expressed concerns that the proposed revisions to this subsection would result in a lack of safety standards. OSM addressed similar concerns at finding no. 14a and b above concerning a single emergency spillway and the containment of a 25-year, 24 hour storm event.

6. ARM 26.4.721

The NPRC appeared to be concerned with Montana's elimination of its nine inches or greater, rill and gulley standard for regraded and resoiled lands. OSM points out that the Federal counterpart at 30 CFR 816.95/817.95 does not use a depth criteria to determine eradication standards. Rather the Federal rules determine the need to eradicate rills and gullies based on their impact to postmining land use or the reestablishment of vegetative cover, or the impact to water quality standards for receiving streams. Montana has proposed rules with similar language which are no less effective than the Federal regulations.

7. ARM 26.4.1001 and 26.4.1001A

The NPRC expressed concerns that without a definition of ''substantially disturb,'' Montana would not be able to interpret its regulations at ARM 26.4.1001 and 1001A. Subsequent to the NPRC's letter dated April 14, 1995, ARM 26.4.1001 and 26.4.1001A were removed from this submittal, revised and approved in SPATS No. MT–018–FOR, **Federal Register** notice dated January 22, 1999 (64 FR 3611). Montana submitted a definition of ''substantially disturb'' at ARM 26.4.301(114) which was also approved at that time.

8. ARM 26.4.321

The NPRC objected to Montana's use of general cross-references, in particular subsection (g), stating that the response is not specific enough. In support, the NPRC cites the corresponding Federal rules at 30 CFR 780.37(a)/784.24(a) and their specific references ''down to section and subsection.'' However, the Federal regulation at 30 CFR 780.37(a)/784.24(a) requires that the State ''Describe the plans to remove and reclaim each road that would not be retained * * *'' Therefore, when Montana lists subchapters 5, 6, 7, and 8 of ARM, Montana is listing the pertinent subchapters which have road-specific reclamation information which is required at 30 CFR 780.37(a)/784.24(a). OSM believes that Montana is complying with the Federal regulations and its rules are no less effective than the Federal regulations.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program by letters dated February 8, 1995; March 1, 1995; and May 23, 2001 (Administrative Record Nos. MT–12–03, MT–12–08 and MT–12–27).

Four agencies responded that they had no comments: the U.S. Army Corps of Engineers (March 2 and March 20, 1995, letters; Administrative Record Nos. MT–12–09 and MT–12–14), the Bureau of Mines (March 17, 1995, letter; Administrative Record No. MT–12–13), the Mine Safety and Health Administration (March 9, 1995 and June 11, 2001, letters; Administrative Record Nos. MT–12–11 and MT–12–30); and the Bureau of Indian Affairs (June 11, 2001, letter; Administrative Record No. MT–12–29).

The Natural Resources Conservation Service (NRCS) responded on March 8,

1995, with comments on the approved Montana program but had no comments on the proposed revisions (Administrative Record No. MT–12–10). The NRCS had the following comments concerning Montana's already approved program:

1. Reference to Soil Conservation Service (SCS)

The NRCS commented that Montana needed to change the reference from the former SCS to the current NRCS, specifically at ARM 26.4.724(3)(a) and 26.4.825(1)(b). OSM is aware that Montana has already made the requested change to those sections in its 1999 revised rules—which will be submitted to OSM in the near future.

2. ARM 26.4.304(9)(b)

The NRCS suggested that ''current condition and trend'' be revised to read ''current ecological condition and trend.'' The requested information at ARM 26.4.304(9)(b) comprises aspects of the vegetative community which Montana has decided are necessary to the permit application. These descriptions are State guidelines, as allowed at 30 CFR 779.19(a)/783.19(a) and not Federal requirements. Therefore, OSM cannot require Montana to incorporate the term ''ecological.'' OSM can, however, send the comment to Montana for consideration when, at such future date, the program is amended.

3. ARM 26.4.304(11)

The NRCS suggested that the soil survey be done at the first order level of detail, which would be consistent with the map scale of one inch equals 400 feet at ARM 26.4.304(11). Both the Federal regulations and Montana's program specify that a soil survey be conducted in accordance with the standards of the National Cooperative Soil Survey. As the scale specified, one inch equals 400 feet, is consistent with a soil survey of the first order, Montana is performing a soil survey to the specifications requested by the NRCS.

4. ARM 26.4.726(2)

The NRCS suggested that the 51 percent native species required by Montana be changed to 75 percent native species, which is required by the NRCS. The counterpart Federal regulations at 30 CFR 816.111(a)(2)/817.111(a)(2) do not specify a certain percentage of native species, but only that native species be used. OSM cannot require Montana to adopt a programmatic requirement which is more stringent than the Federal regulations.

5. ARM 26.4.825(c)(iv)

The NRCS suggested that the reference to the ''Land Capability Guide for Montana, U.S. Soil Conservation Service, September 1, 1982'' be replaced with a reference to an updated NRCS guide, the ''current Field Office Technical Guide (FOTG) for Natural Resources Conservation Service.'' However, there is no Federal counterpart to these rules. Therefore, there is no Federal standard to measure the Montana rule by. OSM cannot require the States to revise their programs when there is no Federal counterpart.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). As this amendment did not relate to air or water quality standards adopted under the authority of the Clean Air Act or the Clean Water Act, OSM requested comments on the amendment from EPA (Administrative Record No. MT–12–04). EPA responded on February 23, 1995, that it had no comments on Montana's amendment (Administrative Record No. MT–12–06).

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 8, 1995, we requested comments on Montana's amendment (Administrative Record No. MT–12–03), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve, with certain exceptions, the amendment sent to us by Montana on February 1 and 28, 1995, and further clarified by letter dated February 6, 1996.

We approve, as discussed in: finding no. 1, ARM 26.4.301(79) through (119), (121) through (133), and (135) through (137), concerning definitions; ARM 26.4.407(1) and (2), concerning conditions of permit; ARM 26.4.601(7), concerning general requirements for road and railroad loop construction; ARM 26.4.639(18)(c), concerning sedimentation ponds and other treatment facilities; ARM 26.4.711(2) through (5), concerning establishment of vegetation; ARM 26.4.924(5), (10) through (14), (16), (17), (18), and (20), concerning disposal of underground development waste: general requirements; ARM 26.4.1005(2), concerning drill holes; ARM 26.4.1006(1), concerning roads and other transportation facilities; ARM 26.4.1007(2), concerning grading, soil salvage, storage, and redistribution; and ARM 26.4.1009(1), concerning diversions; finding no. 2, ARM 26.4.308(2), concerning operations plan; ARM 26.4.314(3), concerning plan for protection of the hydrologic balance; ARM 26.4.405(6) and (8), concerning findings and notice of decision; ARM 26.4.501A(3)(a), concerning final grading requirements; ARM 26.4.524(2), concerning signs and markers; ARM 26.4.601(5), concerning general requirements for road and railroad loop construction; ARM 26.4.602(2), concerning location of roads and railroad loops; ARM 26.4.603(9) and Introduction, concerning embankments; ARM 26.4.605(3)(a)(i), concerning hydrologic impact of roads and railroad loops; ARM 26.4.623(2)(b)(iii), concerning blasting schedule; ARM 26.4.633(2), concerning water quality performance standards; ARM 26.4.634(1) and (2), concerning reclamation of drainages; ARM 26.4.638(2)(a), concerning sediment control structures; ARM 26.4.639(1), (10)(c) and (18), Introduction, concerning sedimentation ponds and other treatment facilities; ARM 26.4.642(5) and (8), concerning permanent and temporary impoundments; ARM 26.4.702(4), concerning redistribution and stockpiling of soil; ARM 26.4.711(6), concerning establishment of vegetation; ARM 26.4.927(2)(c), concerning disposal of underground development waste: durable rock fills; ARM 26.4.932(8)(a)(ii), concerning disposal of coal processing waste; ARM 26.4.1002(1) and (2), concerning information and monthly reports; ARM 26.4.1005(3), concerning drill holes; ARM 26.4.1006(2) through (4), concerning roads and other transportation facilities; ARM 26.4.1007(1), concerning grading, soil salvage, storage, and redistribution; ARM 26.4.1009(2), concerning diversions; ARM 26.4.1011(1), concerning hydrologic balance; ARM 26.4.1116(7)(c), concerning bonding: criteria and schedule for release of bond; ARM 26.4.1116A(1) and (2), concerning reassertion of jurisdiction; ARM 26.4.1141(3), concerning designation of lands unsuitable: definition; ARM 26.4.1212(1),

concerning point system for civil penalties and waivers; finding no. 4, ARM 26.4.301(120), the definition of ''test pit;'' finding no. 5, ARM 26.4.304(5), (6)(a)(ii) and (6)(b)(ii)(B), concerning baseline: information: environmental resources; finding no. 6, ARM 26.4.314(5), concerning protection of the hydrologic balance; finding no. 7, ARM 26.4.321(1) and (3), concerning transportation facilities plan; finding no. 8, ARM 26.4.404(5)(b), concerning review of application; finding no. 9, ARM 26.4.405(6)(l), concerning findings and notice of decision; finding no. 10, ARM 26.4.407(4), concerning conditions of permit; finding no. 11, ARM 26.4.505(4) through (8), concerning burial and treatment of waste materials and disposal of off-site generated waste and fly ash; finding no. 13, ARM 26.4.603(9) and 26.4.639(18)(b), concerning sedimentation ponds and other treatment facilities: construction of sedimentation ponds that meet the criteria of 30 CFR 77.216A; finding no. 14, ARM 26.4.639(10)(b) and (19), concerning the construction of sedimentation ponds; finding no. 17, ARM 26.4.721(1) through (3), concerning eradication of rills and gullies; finding no. 18, ARM 26.4.724(6), concerning the use of revegetation comparison standards; finding no. 19, ARM 26.4.726(2) and (3), concerning vegetation production, cover, diversity, density and utility requirements; finding no. 20, ARM 26.4.821(1)(g), concerning alternate reclamation: submission of plan; finding no. 21, ARM 26.4.825(4)(a) and (c) and (6), concerning alternate reclamation: alternate revegetation; finding no. 22, ARM 26.4.924(15) and 26.4.927(3)(a), concerning the disposal of underground development waste; finding no. 23, ARM 26.4.301(134) and 26.4.924(3), (4), (8), (9), (19) and (21), concerning the definition of ''waste disposal structure'' and the disposal of underground development waste: general requirements; finding no. 24, ARM 26.4.930(3), concerning placement and disposal of coal processing waste: special application and requirements; and finding no. 26, ARM 26.4.1014, concerning test pits.

We defer on, as discussed in finding no. 3, ARM 26.4.301(78); 26.4.303, Introduction, (1), (6) through (8), (13) through (15), (20) through (24); 26.4.404(7) through (10); ARM 26.4.405(5); 26.4.405A; 26.4.405B; and ARM 26.4.1206(1), concerning ownership and control; finding no. 12, ARM 26.4.519A, concerning thick overburden and excess spoil; finding no. 16, ARM 26.4.645(6) and 26.4.646(6), concerning groundwater and surface water monitoring; and finding no. 25, ARM 26.4.932(5)(b), concerning the disposal of coal processing waste.

We already approved, as discussed in finding no. 15, ARM 26.4.639(22), concerning the removal of sedimentation ponds and other treatment facilities, in the May 11, 1990, **Federal Register** notice (55 FR 19727; SPATS No. MT–001–FOR and MT–002–FOR).

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Montana program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this final regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Montana program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Montana to enforce only the approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implication. 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 since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

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 regulation 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 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 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 2002.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

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

2. Section 926.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 1 and 28, 1995	February 12, 2002	ARM 26.4.301(79) through (137); 26.4.304(5) and (6); 26.4.308(2); 26.4.314(3) and (5); 26.4.321(1) and (3); 26.4.404(5); 26.4.405(6) and (8); 26.4.407(1), (2) and (4); 26.4.501A(3); 26.4.505(4) through (8); 26.4.524(2); 26.4.601(5) and (7); 26.4.602(2); 26.4.603(9) and Introduction; 26.4.605(3); 26.4.623(2); 26.4.633(2); 26.4.634(1) and (2); 26.4.638(2); 26.4.639(1), (10), (18) and (19); 26.4.642(5) and (8); 26.4.702(4); 26.4.711(2) through(6); 26.4.721(1) through (3); 26.4.724(6); 26.4.726(2) and (3); 26.4.821(1); 26.4.825(4) and (6); 26.4.924(3) through (5), (8) through (21); 26.4.927(2) and (3); 26.4.930(3); 26.4.932(8); 26.4.1002(1) and (2); 26.4.1005(2) and (3); 26.4.1006(1) through (4); 26.4.1007(1) and (2); 26.4.1009(1) and (2); 26.4.1011(1); 26.4.1014; 26.4.1116(7); 26.4.1116A(1) and (2); 26.4.1141(3); and 26.4.1212(1) are approved. ARM 26.4.301(78); 26.3.303, Introduction, (1), (6) through (8), (13) through (15), and (20) through (24); 26.4.404(7) through (10); 26.4.405(5); 26.4.405A; 26.4.405B, 26.4.519A; 26.4.645(6); 26.4.646(6); 26.4.932(5)(b) and 26.4.1206(1) are deferred.

§ 926.16 [Amended]

3. Section 926.16 is amended by removing and reserving paragraphs (b), (c), (d), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7), and (e)(8).

[FR Doc. 02–3339 Filed 2–11–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[0720–AA59]

Enrollment of Certain Family Members of E–4 and Below Into TRICARE Prime

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule provides for the enrollment of certain family members of E–4 and below in TRICARE Prime. Sponsors with non-enrolled family members will be automatically referred to the local TRICARE Service Center for enrollment. They will be given the opportunity to select or be assigned a primary care manager, or to refuse enrollment into TRICARE Prime. This enrollment may be terminated at any time and these family members may re-enroll at any time.

EFFECTIVE DATE: February 12, 2002.