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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 925.16, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 925.20 Approval of the Missouri abandoned mine land reclamation plan.

The Secretary approved the Missouri abandoned mine land reclamation plan, as submitted on September 11, 1981, effective January 29, 1982. Copies of the approved plan are available at:

(a) Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, Jefferson City, MO 65102.

(b) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton

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Federal Building, 501 Belle Street, Alton, IL 62002.

[64 FR 20167, Apr. 26, 1999]

§ 925.25 Approval of Missouri abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
June 22, 1987	June 16, 1988	10 CSR 40-9.060(2), (3), (4).
August 22, 1988	March 15, 1989	Organization; project selection; rights of entry; coordination of reclamation activities; land acquisition, management and disposal; database.
November 29, 1994 ..	August 24, 1995	RSMo 444.810.2 through .8; 444.915.3; 10 CSR 40-9.020(1)(D), (E), (3)(A); AML Plan § 884.13(C)(2), (D)(3), (4).
March 31, 1998	June 24, 1998	AML plan sections 884.13(c)(6) and (d)(3); Emergency response reclamation program.

[62 FR 9946, Mar. 5, 1997, as amended at 63 FR 34280, June 24, 1998; 64 FR 20167, Apr. 26, 1999]

PART 926—MONTANA

Sec.

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

§ 926.10 State regulatory program approval.

The Montana permanent program submitted on August 3, 1979, as amended November 13, 1979; January 4, January 9, January 10, January 12, January 13, January 30, February 1, and February 20, 1980; November 3, 1980; and August 26, 1981, is approved effective February 10, 1982. Copies of the approved program, as amended, are available at:

(a) Montana Department of Environmental Quality, Industrial and Energy Minerals Bureau, P.O. Box 200901, Helena, Montana 59620-0901, (406) 444-1923.

(b) Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776.

[59 FR 17932, Apr. 15, 1994, as amended at 64 FR 3610, Jan. 22, 1999]

§ 926.15 Approval of Montana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

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Original amendment submission date	Date of final publication	Citation/description
September 13, 1983	January 3, 1984	MCA 82-4-237, -251(4), -254.
April 2, 1984	January 3, 1985	ARM 26.4.1206 through .1209, .1211, .1212.
January 3, 1984	November 18, 1985	ARM 26.4.310, .621 through .626, .1260 through .1263.
July 3, 1985	February 14, 1986 ..	MCA 82-4-231, 232, 254.
April 23, 1987	December 31, 1987 ..	MCA 82-4-203, 222, 223.
December 21, 1988 ..	May 11, 1990	ARM 26.4 subchapters 3, definitions and strip mine permit application requirements; 4, mine permit and test pit prospecting permit procedures; 5, backfilling and grading requirements; 6, transportation facilities, explosives and hydrology; 7, topsoiling, revegetation, and protection of wildlife and air resources; 8, alluvial valley floors, prime farmlands, alternate reclamation, and auger mining; 9, underground coal and uranium mining; 10, prospecting; 11, bonding, insurance reporting, and special areas; 12, special departmental procedures; 13, miscellaneous provisions.
June 19, 1990	March 20, 1991, August 19, 1992.	ARM 26.4.724 through 726, .728, .730 through .733, .1301A, .724; ARM 26.4.920, .924 through .927, .930, .932; ARM 26.4 subchapters 3, 5, 8, 11, 12.
October 19, 1992	February 25, 1994 ..	MCA 82-4-203(26).
June 16, 1993, July 28, 1993.	February 1, 1995	MCA 82-4-203, subsections (14), (16), (21), (23), (29), (34), (35), (36), definitions; 82-4-224, surface owner consent; 82-4-226, subsections (1), (2), (3), (5), (6), (8), prospecting permits and notices of intent; 82-4-227, subsections (1), (2), (3), (7) through (13), permit approval/denial criteria.
May 16, 1995	January 22, 1999 ...	MCA 2-15-3501, 2-15-3502, 82-4-203(1) through (35), except (24); MCA 82-4-204; MCA 82-4-205; MCA 82-4-221; MCA 82-4-223; MCA 82-4-226(8); MCA 82-4-227; MCA 82-4-231; MCA 82-4-232(6) and (7); MCA 82-4-235; MCA 82-4-240; MCA 82-4-242; MCA 82-4-251; and MCA 82-4-254(1) through (3). Decision deferred on MCA 82-4-239; MCA 82-4-203(24) disapproved.
March 5, 1996	January 22, 1999 ...	ARM 26.4.301(114); 26.4.410; 26.4.1001; and 26.4.1001A.

[62 FR 9946, Mar. 5, 1997, as amended at 64 FR 3610, 3615, Jan. 22, 1999]

§ 926.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Montana is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Montana's established administrative or legislative procedures.

(a) [Reserved]

(b) By July 10, 1990, Montana shall submit a proposed revision to its rules at ARM 26.4.301(117) to eliminate the phrase "or for the purpose of developing a test market" from the definition of test pit.

(c) By July 10, 1990, Montana shall submit a proposed revision to its rules at 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.

(d) By July 10, 1990, Montana shall submit a proposed revision to its rules at ARM 26.4.405(6)(1) to correct the cross reference in the rule to cite rule ARM 26.4.1302, governing the use of ex-

isting structures, rather than the deleted rule ARM 26.4.309.

(e) By October 19, 1992, Montana shall:

(1) Submit proposed revisions to ARM 26.4.301(100), or other revision, to include pioneer and construction roadways in the definition of "road";

(2) Submit proposed revisions to ARM 26.4.505 and 26.5.510, or other program revision, to incorporate requirements for the disposal of "waste" on surface mines no less effective than 30 CFR 816.81-816.84 and §816.102(e);

(3) Submit proposed revisions to ARM 26.4.321(3), or other revisions, to specify certification content requirements no less effective than 30 CFR 780.37(b) and §784.24(b);

(4) Submit proposed revisions to ARM 26.4.321, or other revisions, to incorporate application requirements no less effective than 30 CFR 780.37(a) (2), (3), (6) and §784.24(a) (2), (3), (6);

(5) Submit proposed revisions to ARM 26.4.924 and 26.4.932, or other revisions, to specify whether the waste disposal governed by these rules is within or outside mine surface excavations, and to clarify what constitutes a "waste disposal structure";

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(6) Submit proposed revisions to ARM 26.4.924(4), or other revisions, to require that all non-impounding underground development waste disposal structures meet the MSHA requirements at 30 CFR 77.214 and §77.215 and also to clarify what constitutes a “coal waste refuse structure”;

(7) Submit proposed revisions to ARM 26.4.924, or other revisions, to incorporate a requirement no less effective than 30 CFR 817.83(c)(4);

(8) Submit proposed revisions to ARM 26.4.930, or other revisions, to add application requirements that are no less effective than 30 CFR 784.16(e); and

(9) Submit proposed revisions to remove the following parts of this State initiative that the Director is not approving but which have been promulgated by Montana:

ARM 26.4.301(48) and (128), the word “non-coal”; ARM 26.4.305(2)(b) and 26.4.321(3), the phrases “* * *, registered land surveyor, * * * ” and “* * * , or a registered land surveyor, * * *”; and ARM 26.4.924, subsection ARM 26.4.924(14).

(f)-(j) [Reserved]

(k) By March 23, 1999, Montana shall revise ARM 26.4.301(52), or otherwise modify its program, to require that the definition of “Historically used for cropland” address lands that would have been likely used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

(l) By March 23, 1999, Montana shall revise ARM 26.4.1001, ARM 26.4.401, or otherwise modify its program, to provide for public notice and opportunity to comment on prospecting permit applications, regulatory authority decisions on such applications, and notice and hearing requirements on prospecting permit applications, to be no less effective than 30 CFR 772.12(c), (d), and (e), and 772.15.

[49 FR 20287, May 14, 1989, as amended at 55 FR 19736, May 11, 1990; 57 FR 37446, Aug. 19, 1992; 59 FR 9087, Feb. 25, 1994; 60 FR 6013, Feb. 1, 1995; 64 FR 3610, 3615, Jan. 22, 1999]

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§ 926.20 Approval of Montana abandoned mine land reclamation plan.

The Montana Abandoned Mine Land Reclamation Plan, as submitted on June 16, 1980, and as revised on July 28, 1980, is approved effective November 24, 1980. Copies of the approved plan are available at:

(a) Montana Department of Environmental Quality, 1625 Eleventh Avenue, Helena, MT 59620-1601.

(b) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601-1918.

[60 FR 37002, July 19, 1995]

§ 926.21 Required abandoned mine land plan amendments.

Pursuant to 30 CFR 884.15, Montana is required to submit for OSM’s approval the following proposed plan amendment by the date specified.

(a) By March 23, 1999, Montana shall submit a copy of the State’s reorganization of the abandoned mine land reclamation plan, as well as all statutes and rules relating to the abandoned mine land reclamation plan revised subsequent to the final rule published in the FEDERAL REGISTER dates July 19, 1995 (60 FR 36998).

(b) [Reserved].

[64 FR 3610, Jan. 22, 1999]

§ 926.25 Approval of Montana abandoned mine land reclamation plan amendments.

(a) Montana certification of completing all known coal-related impacts is accepted, effective July 9, 1990.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director’s decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

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Original amendment submission date	Date of final publication	Citation/description
April 20, 1983	August 18, 1983	Liens on noncoal projects; noncoal additions to Montana Abandoned Mine Land Inventory; emergency response reclamation program; organizational restructuring.
March 22, 1995	July 19, 1995	Reclamation of interim program and bankrupt surety coal sites; future set-aside program; water supply facilities and water replacement; other policies and procedures.

[62 FR 9947, Mar. 5, 1997]

§ 926.30 State-Federal cooperative agreement.

COOPERATIVE AGREEMENT

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

ARTICLE I: AUTHORITY, PURPOSES, AND RESPONSIBLE AGENCIES

A. Authority

This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary, under 30 U.S.C. 1253, to elect to enter into an agreement for State control and regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations¹ not subject to 43 CFR Group 3400, and surface coal mining and reclamation operations and activities in Montana on Federal lands consistent with SMCRA, the Federal lands program (30 CFR) Chapter VII, Subchapter D), and the Montana State Program (State Program), including among other things, the Montana Strip and Underground Mine Reclamation Act, Part 2, Chapter 4, Title 82, Montana Code Annotated (State Act or MCA).

B. Purposes

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

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

C. Responsible Agencies

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

ARTICLE II: EFFECTIVE DATE

Upon signing by the Secretary and the Governor, this Agreement will take effect 30 days after final publication as a rule making in the FEDERAL REGISTER.² This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

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

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

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the State Program are applicable to Federal lands in Montana except as otherwise stated in this Agreement, SMCRA, 30

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

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CFR 740.4, 740.11(a), and 745.13 or other applicable Federal laws, Executive Orders, or regulations.

ARTICLE V: REQUIREMENTS FOR THE AGREEMENT

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

A. Funds

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

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

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

B. Reports and Records

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

C. Personnel

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

D. Equipment and Facilities

DEQ shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are

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necessary to carry out the requirements of this Agreement.

E. Permit Application Fees and Civil Penalties

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

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

A. Receipt and Distribution of the PAP or Transfer Application

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

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

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

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

B. Review of the PAP or Transfer Application

1. DEQ is responsible for:

a. As authorized by 30 CFR 740.4(c),

(1) Being the primary point of contact with the applicant regarding the review of the PAP or transfer application and communications regarding all decisions and determinations with respect to the PAP or transfer application;

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

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

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

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

(6) Consulting with and obtaining the consent, as necessary, of BLM pursuant to 30 CFR 740.4(c)(3), with respect to requirements relating to the development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations involving leased Federal coal pursuant to 43 CFR Group 3400;

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

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

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

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

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

2. OSM is responsible for:

a. When the PAP includes Federal lands,

(1) Making determinations and evaluations for NEPA compliance documents as required by 30 CFR 740.4(c)(7)(l) through (vii);

(2) Reviewing the appropriate portions of the PAP for compliance with the non-delegable responsibilities of the Secretary pursuant to SMCRA and 30 CFR 745.13, and for compliance with the requirements of other Federal laws, Executive Orders, and regulations;

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

(4) Exercising its responsibilities in a timely manner governed, to the extent possible, by the deadlines established in the State Program;

(5) Assisting DEQ, upon request, in carrying out its responsibilities by:

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

(b) Obtaining comments and findings of other Federal agencies with jurisdiction or responsibility over Federal lands;

(c) Scheduling joint meetings between DEQ and Federal agencies;

(d) Reviewing and analyzing the PAP, to the extent possible, and providing to DEQ the work product within 50 days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSM and DEQ; and

(e) Providing technical assistance, if available OSM resources allow.

b. In addition, where a mining plan action is required pursuant to 30 CFR Part 746:

(1) Consulting with and obtaining the concurrences of BLM, the Federal land management agency, and any other Federal agency, as necessary, prior to making recommendation to the Secretary concerning approval of the mining plan;

(2) Upon notification from the DEQ that certain permit conditions required by the Federal land management agency are not incorporated in the State permit, OSM will determine whether such conditions are necessary. When OSM believes the conditions are necessary, OSM will work with the Federal land management agency to find another means to resolve the issue and, where appropriate, OSM will facilitate the attachment of conditions to the appropriate Federal authorizations; and

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

3. The Secretary:

a. Shall concurrently carry out his responsibilities that cannot be delegated to DEQ pursuant to SMCRA and 30 CFR 745.13, the

Federal lands program, the MLA, NEPA, this Agreement, and other applicable Federal laws including, but not limited to, those listed in Appendix A. The Secretary shall carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the State Program;

b. Reserves the right to act independently of DEQ to carry out his responsibilities under laws other than SMCRA, and where Federal law permits, to delegate some of the responsibilities to OSM; and

c. Shall be responsible for approval, disapproval, or conditional approval of mining plans and modifications thereof with respect to lands containing leased Federal coal in accordance with 30 CFR 740.4(a)(1).

4. Coordination:

a. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of a PAP or transfer application with respect to matters covered by the State Program.

b. OSM and DEQ shall coordinate with each other during the review process of a PAP or transfer application as needed.

c. OSM and DEQ may request and schedule meetings with the applicant with adequate advance notice to each other.

d. DEQ shall keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies. DEQ shall send to OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP or transfer application. OSM shall send to DEQ copies of all OSM correspondence with the applicant and any other information received from the applicant which may have a bearing on the PAP or transfer application. Any conflicts or differences of opinions that may develop during the review process should be resolved at the lowest possible staff level.

e. OSM shall have access to DEQ files concerning operations on Federal lands.

f. Where a mining plan action is required pursuant to 30 CFR Part 746, OSM and DEQ shall develop a work plan and schedule for the PAP review and each will designate a project leader. The project leaders will serve as the primary points of contact between OSM and DEQ throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSM shall furnish DEQ with its review comments on the PAP and specify any requirements for additional data. DEQ shall provide OSM all available information that may assist OSM in preparing any findings for the mining plan action.

g. On matters concerned exclusively with regulations under 43 CFR Group 3400, BLM will be the primary contact with the applicant and shall inform DEQ of its actions and

provide DEQ with a copy of documentation on all decisions.

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

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

C. Approval of the PAP or Transfer Application

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

2. DEQ must consider the comments of Federal agencies in the context of permit issuance and will document these comments in the record of permit decisions. To the extent allowed by Montana law, permits issued by DEQ will include terms and conditions imposed by the Federal land management agency pursuant to applicable Federal laws and regulations other than SMCRA, in accordance with 30 CFR 740.13(c)(1). When Federal agencies recommend permit conditions and these conditions are not adopted by DEQ, DEQ will provide OSM with documentation as to why they were not incorporated as permit conditions.

3. When a mining plan action is required pursuant to 30 CFR Part 746, DEQ may make a decision on approval, conditional approval, or disapproval of the permit application component of the PAP on Federal lands in accordance with the State Program prior to the necessary Secretarial decision on the mining plan, provided that DEQ advises the applicant that Secretarial approval of the mining plan action must be obtained before the applicant may conduct surface coal mining and reclamation operations on the Federal lands. To the extent allowed by the State law, DEQ shall reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

4. After making its decision on the permit application component of the PAP or transfer application, DEQ shall send a copy of the signed permit form and State decision document to the applicant, OSM, the Federal land management agency, and any agency

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with jurisdiction over a publicly-owned park, or historic property included in the NRHS which would be adversely affected by the surface coal mining and reclamation operations.

ARTICLE VII: INSPECTIONS

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

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

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

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

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

ARTICLE VIII: ENFORCEMENT

A. DEQ shall have primary enforcement authority under SMCRA concerning compliance with the requirements of this Agreement and the State Program in accordance with 30 CFR 740.4(c)(5) and 740.17(a)(2). En-

forcement authority given to the Secretary under SMCRA, and its implementing regulations, or other Federal laws and Executive Orders, including, but not limited to, those listed in Appendix A, is reserved to the Secretary.

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

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

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

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

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

ARTICLE IX: BONDS

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

B. DEQ will have primary responsibility for the approval and release of performance bonds required for surface coal mining and reclamation operations on Federal lands. However, release of a performance bond on lands subject to an approved mining plan requires the concurrence of OSM as provided in 30 CFR 740.15(d)(3). Prior to such concurrence, OSM shall coordinate with other Federal agencies having the authority over the lands involved. DEQ shall annually advise OSM of adjustments to the performance bond.

C. Performance bonds will be subject to forfeiture with the concurrence of OSM, in accordance with the procedures and requirements of the State Program. OSM may not

withhold its concurrence unless DEQ's forfeiture decision is not in accordance with the requirements and procedures of the State program.

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

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

A. Unsuitability Petitions

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

2. When either DEQ or OSM receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of receipt of the petition and the anticipated schedule for reaching a decision. OSM shall coordinate with and solicit comments from the applicable Federal land management agency. OSM and DEQ shall fully consider data, information, and recommendations of all agencies.

B. Valid Existing Rights (VER) and Compatibility Determinations

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

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

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

3. Where a VER determination is requested for Federal lands protected under section 522(e)(3), DEQ will make the VER determination. DEQ will determine, in consultation

with the State Historic Preservation Officer, whether any proposed operation will adversely affect any publicly-owned park or historic place listed on the National Register of Historic Sites (NRHS).

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

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

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

ARTICLE XI: TERMINATION OF THE AGREEMENT

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

ARTICLE XII: REINSTATEMENT OF THE AGREEMENT

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

ARTICLE XIII: AMENDMENTS OF THE AGREEMENT

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

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. The Secretary or the State may, from time to time, revise and promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its respective laws or regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR Part 732 for changes to the State Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

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

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

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

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

ARTICLE XVI: RESERVATION OF RIGHTS

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

Approved:

Dated: May 8, 1998.

Marc Racicot,
Governor of Montana.

Dated: July 7, 1998.

Bruce Babbitt,
Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR Part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR Part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR Part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.
6. Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et seq.*

7. The American Indian Religious Freedom Act, 42 U.S.C. 1986 *et seq.*

8. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*

9. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

14. Executive Order 11988 (May 24, 1977), for flood plain protection.

15. Executive Order 11990 (May 24, 1977), for wetlands protection.

16. Executive Order 12898 (February 11, 1994) for Federal Actions to Address Environmental Justice on Minority Populations and Low Income Populations.

17. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

18. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

19. The Constitution of the United States.

20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

21. 30 CFR Chapter VII.

22. The Constitution of the State of Montana.

23. Montana Strip and Underground Mine Reclamation Act (MSUMRA), Part 2, Chapter 4, Title 82, Montana Code Annotated.

24. Title 26, Chapter 4, Subchapter 3, Administrative Rules of Montana.

25. Montana Environmental Policy Act (MEPA).

[63 FR 40794, July 30, 1998]

PART 931—NEW MEXICO

Sec.

931.1 Scope.

931.10 State regulatory program approval.

931.11 Conditions of the State program approval.

931.13 Preemption of New Mexico laws and regulations.

931.15 Approval of New Mexico regulatory program amendments.

931.16 Required program amendments.

931.20 Approval of the New Mexico abandoned mine reclamation plan.

931.25 Approval of New Mexico abandoned mine land reclamation plan amendments.

931.26 Required plan amendments.

931.30 State-Federal cooperative agreement.