

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 926

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

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

**ACTION:** Final rule.

**SUMMARY:** The Governor of the State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) are amending the cooperative agreement between the Department of the Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on Federal lands within Montana. Cooperative agreements are provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These amendments clarify Montana's responsibility for the administration of its approved State program on lands subject to the Federal lands program in Montana.

**EFFECTIVE DATE:** August 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ranvir Singh, P.E., Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202-5733; Telephone: (303) 844-1489.

## SUPPLEMENTARY INFORMATION:

## I. Background

## II. Summary of the Cooperative Agreement

Article I: Authority, Purposes, and Responsible Agencies.

Article II: Effective Date.

Article III: Definitions.

Article IV: Applicability.

Article V: Requirements for the Agreement.

Article VI: Review and Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights (Transfer Application).

Article VII: Inspections.

Article VIII: Enforcement.

Article IX: Bonds.

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.

Article XI: Termination of the Agreement.

Article XII: Reinstatement of the Agreement.

Article XIII: Amendments to the Agreement.

Article XIV: Changes in State or Federal Standards.

Article XV: Changes in Personnel and Organization.

Article XVI: Reservation of Rights.

## III. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review
2. Regulatory Flexibility Act
3. Small Business Regulatory Enforcement Fairness Act
4. Unfunded Mandates
5. Executive Order 12630—Takings
6. Executive Order 12612—Federalism
7. Executive Order 12988—Civil Justice Reform
8. Paperwork Reduction Act
9. National Environmental Policy Act
10. Author

## I. Background

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

On July 5, 1994, the Governor, pursuant to 30 CFR 745.14 and at the recommendation of the Office of Surface Mining Reclamation and Enforcement (OSM), submitted a proposed modified cooperative agreement to address among other things, elimination of duplicative State-Federal permitting efforts and streamlining of the permitting processes in accordance with the revised Federal lands regulations at 30 CFR Part 740 (48 FR 6912, February 16, 1983). OSM published the requested amendments in the January 10, 1997, **Federal Register** (62 FR 1408) and announced a public comment period on the proposed rules until March 11, 1997. The notice also provided that, if requested, OSM would hold a public hearing. However, since no person contacted OSM to express an interest in testifying at the public hearing, no public hearing was held. OSM reopened the comment period on the proposed rule for an additional 30 days on April 7, 1997 (62 FR 16506) but did not receive any written comments on the proposed amendments during either of the two comment periods.

## II. Summary of the Cooperative Agreement

No written comments were received from any person or organization on the proposed amendments during the specified comments period. Therefore, no changes are being made and the proposed amendments as published in the **Federal Register** on January 10, 1997 (62 FR 1408) are being adopted as final. A discussion of the terms of the cooperative agreement follows.

## Article I: Authority, Purposes, and Responsible Agencies

Paragraph A of Article I sets forth the legal authority for the Montana Cooperative Agreement (Agreement); which is provided by section 523(c) of SMCRA. This paragraph states that the Agreement provides for State regulation of coal exploration operations<sup>1</sup> not subject to 43 CFR Group 3400, and surface coal mining and reclamation operations and activities in Montana on Federal lands.

Paragraph B sets out the purposes of the Agreement.

Paragraph C states that the Department of Environmental Quality (DEQ) is the agency responsible for administering the Agreement on behalf of the Governor of Montana. Paragraph C also names OSM as the agency responsible for administering the Agreement on behalf of the Secretary.

## Article II: Effective Date

Article II provides that after the Agreement has been signed by the Secretary and the Governor, it will become effective 30 days after publication in the **Federal Register**. It will remain in effect until terminated as provided in Article XI.

## Article III: Definitions

Article III provides that the terms and phrases used in the Agreement, except the term "permit application package (PAP)," would have the same meanings as they have in SMCRA, 30 CFR Parts 700, 701, 740, and the State Program. As explained in the proposed rule published in the **Federal Register** on January 10, 1997, 62 FR 1408, 1409-1410, additional language has been included in Article III to define the term "Permit Application Package (PAP)." Defining terms and phrases in this manner ensures consistency between applicable regulations and the Agreement. Where there is a conflict between the referenced State and Federal definitions, the definitions used in the State Program will apply, unless otherwise required by Federal regulation.

## Article IV: Applicability

Article IV states that the laws, regulations, terms and conditions of the State Program are applicable to Federal lands in Montana except as otherwise stated in the Agreement, SMCRA, 30 CFR 740.4, 740.11(a), and 745.13 or other applicable Federal laws, Executive Orders, or regulations.

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

#### *Article V: Requirements for the Agreement*

Paragraph A mutually binds the Governor and the Secretary to comply with all provisions of the Agreement.

Paragraph B.1 requires DEQ to devote adequate funds to the administration and enforcement of the requirements of the State Program on Federal lands. OSM is required to reimburse the State, as provided in section 705(c) of SMCRA and 30 CFR 735.16, for the costs of administration and enforcement if the State complies with the terms of this Agreement and necessary funds have been appropriated to OSM. 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.

Paragraph B.2 provides that 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.

Paragraph B.3 provides that the funds reimbursed to DEQ under this Agreement will be adjusted in accordance with the program income provisions of 43 CFR Part 12.

Paragraph C provides that DEQ shall submit annual reports to OSM as required by 30 CFR 745.12(d). The report will contain information about DEQ's compliance with the terms of the Agreement. OSM and DEQ shall exchange information that is developed under the Agreement, unless prohibited by Federal or State law. OSM is also required to provide DEQ with a copy of OSM's final evaluation report regarding State administration and enforcement of the Agreement, and if the State has any comments on the evaluation report, OSM shall attach those comments to the report before sending it to the Congress or other interested parties.

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

Paragraph E provides that DEQ shall assure itself access to equipment, laboratories, and facilities to perform all necessary inspections, investigations, studies, tests, and analyses.

Paragraph F states that the amount of fee charged from an applicant to obtain a permit to conduct surface coal mining and reclamation operations, will be determined by the provisions of section 82-4-223(1) of Montana Code Annotated (MCA), and the applicable

provisions of Federal law. Permit fee collected by DEQ will be considered program income, and all permit fees and civil penalty fines shall be accounted for in accordance with the requirements of 43 CFR Part 12. However, civil penalty fines shall not be considered program income. The Financial Status Report submitted by DEQ pursuant to the requirements of 30 CFR 735.26 shall include the amount of permit application fees collected and attributable to Federal lands during the State fiscal year.

#### *Article VI: Review and Approval of the PAP or Application for Transfer, Assignment or Sale of Permit Rights (Transfer Application)*

Paragraph A describes the process that DEQ is required to follow for receipt and distribution of the PAP or transfer application.

Under paragraph A.1 an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands is required by DEQ to submit an appropriate number of copies of a PAP or transfer application to DEQ. Such PAP or transfer application shall be in the form required by DEQ and shall, at a minimum, contain the information required by 30 CFR 740, and any supplemental information required by OSM, the Bureau of Land Management (BLM) and the Federal land management agency.

Under paragraph A.2, upon receipt of the PAP or transfer application, DEQ shall ensure that an appropriate number of copies of the PAP or transfer application are provided to OSM, the Federal land management agency and any other appropriate Federal agency.

Paragraph B describes the procedures for review of the PAP or transfer application.

Paragraph B.1 describes the responsibilities of DEQ with respect to review, analysis, and approval or disapproval of the permit application component of the PAP or transfer application. As authorized in 30 CFR 740.4(c), DEQ is responsible for: (1) being the primary point of contact with the applicant regarding the review of the PAP or transfer application, and all decisions and determinations on the PAP or transfer application; (2) analysis, review and approval or disapproval of the PAP or transfer application; (3) obtaining comments and findings of Federal agencies; (4) obtaining OSM's determination if a permit revision issued by DEQ will constitute a mining plan modification pursuant to 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 as required by 30 CFR 740.4(c)(2); (6) consulting and obtaining the consent, as necessary, of BLM as required by 30 CFR 740.4(c)(3); (7) approval and release of performance bonds, and approval and maintenance of liability insurance; (8) review and approval of exploration operations as provided in 30 CFR 740.4(c)(6); (9) preparation of documentation to assist OSM in assuring compliance with the requirements of the National Environmental Policy Act (NEPA) and preparation of a State decision package when a mining plan action is required pursuant to 30 CFR 746.18. In the proposed rulemaking, paragraph B.1.a(2) provided, among other things, that DEQ is responsible for the 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.

In "Article III: Definitions" of the proposed rule, the term PAP was defined, for purposes of the Agreement, to mean "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."

Pursuant to the Agreement, DEQ has the responsibility to analyze, review, and approve, conditionally approve or disapprove only that information in the PAP that is submitted by the applicant for a permit, permit revision, permit amendment, or permit renewal, and all information required by SMCRA, the Federal regulations, the State Program. The phrase "the permit application component of the PAP," therefore, clarifies that DEQ will not be expected to review, analyze, review, and approve, conditionally approve or disapprove the information in the PAP that is submitted by the applicant pursuant to the requirements of "all other applicable laws and regulations, including, with respect to leased Federal coal, the MLA and its implementing regulations."

Paragraph B.2 describes the responsibilities of OSM with respect to: (1) making determinations and evaluations for NEPA compliance documents required by 30 CFR 740.4(c)(7)(i) through (vii); (2) reviewing appropriate portions of the PAP to

assure compliance with the non-delegable responsibilities of the Secretary pursuant to SMCRA and 30 CFR 745.13; (3) consulting with BLM prior to making a determination required by 30 CFR 746.18; (4) exercising its responsibilities in a timely manner; (5) providing assistance to DEQ in carrying out its responsibilities; and (6) when a mining plan action is required pursuant 746.18, consulting with and obtaining concurrences of BLM, the Federal land management agency, and any other Federal agency, resolving issues when certain conditions required by the Federal land management agency are not included in the permit by DEQ, and preparing a decision document and recommendations to the Secretary for approval, disapproval or approval with conditions of a mining plan or modification thereof pursuant to 30 CFR 746.13.

Paragraph B.3 provides that the Secretary shall: (1) concurrently and in a timely manner, carry out his responsibilities that cannot be delegated to DEQ pursuant SMCRA and 30 CFR 745.13 and other laws and regulations; (2) reserve the right to act independently of DEQ under laws other than SMCRA, and to delegate some of the responsibilities to OSM; and (3) approve, disapprove, or approve with conditions, the mining plan actions for leased Federal coal pursuant to 30 CFR 740.4(a)(1).

Paragraph B.4 sets forth the coordination obligations of OSM and DEQ in order to meet the purposes of the Agreement. Accordingly, OSM and DEQ will be required to coordinate with each other in developing a work plan and designating project leaders for the PAP or transfer application review process, and in scheduling meetings with the applicant. OSM will not independently initiate contacts with applicants regarding completeness or deficiencies during the review of a PAP or transfer application. As review of the PAP or transfer application progresses, DEQ will keep OSM informed of its findings that may affect the responsibilities of OSM and other Federal agencies. DEQ will also send to OSM copies of any correspondence with the applicant, and allow OSM access to DEQ files concerning operations of Federal lands. Likewise, OSM shall send to DEQ copies of the correspondence or any other information received from the applicant. Any differences of opinion that may surface during the PAP or transfer application review process, should be resolved at the lowest possible staff level.

Paragraph B.4 also provides for OSM and DEQ, with the concurrence of any appropriate Federal agency, to enter into working agreements without amending this Agreement to delegate to DEQ additional responsibilities and decisions that are authorized under applicable Federal laws other than SMCRA. DEQ is also required to work with appropriate agency to develop mutually acceptable terms and conditions for inclusion in the permit issued pursuant to section 522(e)(3) to mitigate adverse impacts on any publicly owned park or places included in the National Register of Historic Sites (NRHS).

Paragraph C describes the process that DEQ is required to follow during the approval of the PAP or transfer application.

Paragraph C.1 provides that DEQ shall make a decision on the permit application component or the PAP or transfer application on Federal lands.

In paragraph C.2, during this decision-making process, DEQ is required to consider the comments of Federal agencies in the context of permit issuance and document these comments in the record of permit decisions. If the permit conditions recommended by Federal agencies are not adopted by DEQ, DEQ is required to provide OSM with documentation as to why they were not included as permit conditions.

Under paragraph C.3, if DEQ approves the PAP or transfer application before the Secretarial decision on a mining plan, DEQ is required to advise the applicant that Secretarial approval of the mining plan must be obtained before the applicant may conduct surface coal mining and reclamation operations on the Federal lands.

Paragraph C.4 provides that after making a decision on the PAP or transfer application, DEQ is required to send a copy of the signed permit form and State decision document to the applicant, OSM and other appropriate agencies.

#### *Article VII: Inspections*

Paragraphs A and B state that DEQ will conduct inspections on lands covered by this Agreement and prepare and file State inspection reports in accordance with the State Program.

Paragraph C designates DEQ as the point of contact and inspection authority in dealing with the operator. However, this Agreement shall not prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

Paragraph D provides that 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.

Paragraph E states that when OSM intends to conduct an inspection under 30 CFR 842.11, DEQ will be given reasonable notice of such an inspection to provide opportunity for State inspectors to join in the inspection. When OSM intends to conduct an inspection in response to a citizen complaint supplying adequate proof of imminent danger to public health and safety, or a significant imminent environmental harm to land, air, or water resources, DEQ will be given at least a 24-hour notice, if practicable, to facilitate a joint Federal-State inspection. Citizen complaints not involving an imminent harm to the public or the environment will be initially referred to DEQ for action. However, 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*

Article VIII sets forth the enforcement obligations and authorities of OSM and DEQ.

Under paragraph A, DEQ will have primary enforcement authority on Federal lands in accordance with the requirements of the Agreement and State Program. Enforcement authority given to the Secretary under Federal laws and Executive Orders will be reserved by the Secretary.

Under paragraph B, DEQ will have primary responsibility for enforcement during joint inspections with OSM. Paragraph B also includes a requirement that DEQ notify OSM prior to suspending or revoking a permit, BLM of any suspension, rescission or revocation of a permit containing leased Federal coal.

Paragraph C preserves OSM's authority to take any enforcement action necessary to comply with 30 CFR Parts 842, 843, 845 and 846 where OSM conducted an inspection or where, during a joint inspection with DEQ, the two cannot agree on the appropriateness of a particular enforcement action.

Paragraph D provides that OSM and DEQ will notify each other of all violations of applicable regulations and all actions taken on the violations.

Paragraph E provides that personnel of DEQ and OSM will be mutually available to serve as witnesses in enforcement actions taken by either party.

Paragraph F specifies that this Agreement will not limit the Secretary's

authority to enforce Federal laws other than SMCRA.

#### *Article IX: Bonds*

Under paragraph A, DEQ and the Secretary will require each operator conducting operations on Federal lands to submit a single performance bond, sufficient to cover the operator's responsibilities, jointly payable to both the United States and DEQ. All applicable State and Federal requirements must be fulfilled during the bond period. If the Agreement is terminated, paragraph A requires that the portion of the bond covering Federal lands shall be payable only to the United States.

Paragraph B provides that DEQ will have the primary responsibility to approve and release performance bonds, however, DEQ must obtain OSM's concurrence prior to releasing a performance bond on lands subject to an approved mining plan. OSM, in turn, will be required to coordinate with the appropriate Federal land management agency before concurring to such bond release. DEQ will annually advise OSM of any adjustments to the performance bond.

Paragraph C states that forfeiture of performance bonds will be in accordance with the State Program and subject to OSM concurrence.

Paragraph D clarifies that the performance bond does not meet the requirement for a Federal lease bond under 43 CFR Part 3474, or for the lessee protection bond 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*

Paragraph A.1 provides that a petition to designate areas of Federal lands as unsuitable for all or certain types of surface coal mining and reclamation operation will be filed with OSM for processing in accordance with 30 CFR 769, and that the Secretary reserves the authority to designate or terminate such designation.

Paragraph A.2 provides that DEQ and OSM will notify each other of any petition to designate lands as unsuitable that could impact adjacent Federal and non-federal lands, and solicit and consider each other's views on a petition. OSM will coordinate with the Federal land management agency with jurisdiction over the area covered by the petition, and will solicit comments. OSM and DEQ shall fully consider data,

information, and recommendations of all agencies.

Paragraph B.1 provides that the Secretary will make the valid exiting rights (VER) determination for Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA. Where 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.

Paragraph B.2 states that the Secretary will make VER determinations 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). OSM will process requests for determinations of compatibility under section 522(e)(2) of SMCRA and part 30 CFR 761.12(c).

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

Paragraph B.3 also states that 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. In these instances, 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.

Paragraph B.4 provides that 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.

Paragraph B.5 states that 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*

Article XI specifies that the Agreement may be terminated as specified under 30 CFR 745.15.

#### *Article XII: Reinstatement of the Agreement*

Article XII provides that, if terminated, the Agreement may be reinstated under 30 CFR 745.16. That provision allows for reinstatement of a cooperative agreement upon application by the State after remedying the defects for which the agreement was terminated and the submission of evidence to the Secretary that the State can and will comply with all of the provisions of the Agreement.

#### *Article XIII: Amendments to the Agreement*

Article XIII provides that the 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*

Paragraph A recognizes that the Secretary or the Governor may, from time to time, revise and promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. If it is determined to be necessary to keep this Agreement in force, each party shall 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.

Paragraph B requires that DEQ and OSM to 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*

Paragraph A states that DEQ and OSM shall 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.

Paragraph B provides that if 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*

This agreement will not be construed as waiving or preventing the assertion of any rights 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 of this Agreement.

### **III. Procedural Determinations**

#### *1. Executive Order 12866—Regulatory Planning and Review*

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

#### *2. 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.*). This rule will amend the cooperative agreement between the Department of the Interior and the State of Montana. It will streamline the permitting process in Montana by delegating to Montana the sole responsibility to issue permits for coal mining and reclamation operations on Federal lands under the Federal lands program regulations. It will eliminate duplicative permitting requirements, thereby increasing governmental efficiency. The rule will also update the cooperative agreement to reflect current regulations and agency structures.

#### *3. 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 or more. The rule only affects the State of Montana and the costs of carrying out the functions under the cooperative agreement are offset by grants from the Federal government.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the rule does not impose any new requirements on the coal mining industry or consumers. The functions being performed by the State under the cooperative agreement are offset by grants from the Federal government.

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 for the reasons stated above.

#### *4. Unfunded Mandates*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

#### *5. Executive Order 12630—Takings*

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule revises an existing cooperative agreement at the request of the State of Montana and will result in the delegation of authority to the State. A takings implication assessment is not required.

#### *6. Executive Order 12612—Federalism*

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. The rule revises an existing cooperative agreement at the request of the State of Montana and will result in the delegation of authority to the State. Therefore, a Federalism assessment is not required.

#### *7. Executive Order 12988—Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *8. Paperwork Reduction Act*

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

#### *9. National Environmental Policy Act*

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the NEPA process in accordance with the Departmental Manual 516 DM 6, Appendix 8.4(B)(21).

#### *10. Author*

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

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

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 15, 1998.

**Sylvia V. Baca,**

*Acting Assistant Secretary, Land and Minerals Management.*

Accordingly, 30 CFR Part 926 is amended as follows:

#### **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 926.30 is revised to read as follows:

#### **§ 926.30 State-Federal cooperative agreement.**

##### **COOPERATIVE AGREEMENT**

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

#### **Article I: Authority, Purposes, and Responsible Agencies**

##### **A. Authority**

This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary, under 30 U.S.C. 1253, to elect to enter into an agreement for State control and

regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations<sup>1</sup> not subject to 43 CFR Group 3400, and surface coal mining and reclamation operations and activities in Montana on Federal lands consistent with SMCRA, the Federal lands program (30 CFR) Chapter VII, Subchapter D), and the Montana State Program (State Program), including among other things, the Montana Strip and Underground Mine Reclamation Act, Part 2, Chapter 4, Title 82, Montana Code Annotated (State Act or MCA).

#### B. Purposes

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

#### C. Responsible Agencies

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

#### Article II: Effective Date

Upon signing by the Secretary and the Governor, this Agreement will take effect 30 days after final publication as a rule making in the **Federal Register**.<sup>2</sup> 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 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 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;

(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

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

<sup>2</sup> See explanation in Article II at 46 FR 20983, April 8, 1981.

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)(i) through (vii). DEQ and OSM shall coordinate and cooperate with each other so that, if possible, one Environmental Assessment or Environmental Impact Statement is produced to comply with NEPA and the Montana Environmental Policy Act (MEPA);

(2) Preparation of a State decision package, which includes written findings indicating that 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)(i) through (vii);

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The Secretary:

a. Shall concurrently carry out his responsibilities that cannot be delegated to DEQ pursuant to SMCRA and 30 CFR 745.13, the Federal lands program, the 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 with jurisdiction over a publicly-owned park, or historic property included in the NRHS which would be adversely affected by the surface coal mining and reclamation operations.

#### Article VII: Inspections

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

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

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

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

E. OSM shall give DEQ reasonable notice of its intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When OSM is responding to a citizen complaint supplying adequate proof of an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it shall contact DEQ

no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, must be referred initially to DEQ for action. The Secretary reserves the right to conduct inspections without prior notice to DEQ, if necessary, to carry out his responsibilities under SMCRA.

#### Article VIII: Enforcement

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

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

C. During any inspection made solely by OSM or any joint inspection where DEQ 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).

[FR Doc. 98-20195 Filed 7-29-98; 8:45 am]

BILLING CODE 4310-05-M