



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT-037-FOR; Docket ID: OSM-2021-0006; S1D1S SS08011000

SX064A000 212S180110; S2D2S SS08011000 SX064A000 21XS501520]

Montana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) approves an amendment to the Montana regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed an addition to the Montana Code Annotated (MCA), which would revise and add regulations in the Administrative Rules of Montana (ARM) pertaining to ownership and control. These changes were required by an October 2, 2009, letter from OSM to Montana and in response, Senate bill 92, was approved by the 2013 Montana Legislature. Montana also proposed other ARM revisions unrelated to ownership and control.

DATES: The effective date is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Division Chief, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82602. Telephone: (307) 204-4397

E-mail: jfleischman@osmre.gov

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Submission of the Amendment

- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Statutory and Executive Order Reviews

I. Background on the Montana Program

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

II. Submission of the Amendment

By letter dated July 28, 2021 (FDMS Document ID No. OSM-2021-0006-0001), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) that proposed revisions to existing ARM that would satisfy the statutory changes in the MCA, including revisions to 17.24.301 (Definitions), 17.24.302 (Format, Data Collection, and Supplemental Information), 17.24.303 (Legal, Financial, Compliance, and Related Information), 17.24.416 (Permit Renewal), and 17.24.418 (Transfer of Permits). New provisions in the ARM proposed by Montana that would satisfy the statutory changes in the MCA include 17.24.1229 (Criminal Penalties and Civil Actions),

17.24.1264 (Montana Department of Environmental Quality Obligations Regarding the Applicant Violator System), 17.24.1265 (Montana Department of Environmental Quality Eligibility Review), 17.24.1266 (Questions About and Challenges to Ownership or Control Findings), and 17.24.1267 (Information Requirements for Permittees). Montana also proposed minor revisions to the existing ARM that are unrelated to Senate bill 92, at 17.24.304 (Baseline Information: Environmental Resources), 17.24.308 (Operations Plan), 17.24.313 (Reclamation Plan), 17.24.314 (Plan for Protection of the Hydrologic Balance), 17.24.401 (Filing of Application and Notice), 17.24.403 (Informal Conference), 17.24.425 (Administrative Review), and 17.24.1201 (Frequency and Methods of Inspections) that are unrelated to ownership and control.

Montana's submission of Senate bill 92 and proposed changes to the ARM will allow Montana to fulfill the requirements of a letter OSM sent to Montana on October 2, 2009 (hereinafter 732 letter) under the authority of 30 CFR 732.17(d), by promulgating counterpart rules that are no less effective than Federal counterpart regulations. The 732 letter required Montana to submit a State program amendment that pertained to the Applicant Violator System and ownership and control provisions. The Applicant Violator System and challenges to listings in the Applicant Violator System are found in SMCRA's implementing regulations, at 30 CFR 773.25, 773.26, and 773.28.

We announced receipt of the proposed amendment in the January 11, 2022, *Federal Register* (87 FR 1372). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. No public hearing was held because no request for a public hearing was received. We received two public comments about the program amendment, and the public comment period ended on February 10, 2022. During our review of the amendment, we identified five concerns with the program amendment as submitted. Our concerns included 1) typographical and grammatical errors, 2) requiring Taxpayer

Identification Numbers for the applicant and operator of the pending permit application, 3) requiring “Partner” and “Member” of the applicant and operator to submit information as required by Federal counterpart rules, 4) applying a willful or knowing standard for liability regarding characterizing criminal penalties and civil actions consistent with Federal counterpart rules, and 5) including clarifying language similar to Federal counterpart rules. We notified Montana of these concerns by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). We delayed final rulemaking to afford Montana the opportunity to submit new material to address the deficiencies. Montana responded in a letter dated May 3, 2023, and provided us with a revised program amendment proposal, which addressed all of the concerns identified in our March 30, 2023, letter (Docket ID: OSM-2021-0006-0004). On August 7, 2023, OSM announced receipt of the revised program amendment proposal in the *Federal Register* (88 FR 52082) (Docket ID: OSM-2021-0006-0005). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. No public hearing was held because no request for a public hearing was received. No comments were received. The public comment period ended August 22, 2023. Because Montana addressed all our concerns with the initial program amendment submission and we had no additional concerns with the revised program amendment submission, we are proceeding with the final rule notice of approval.

III. OSM’s Findings

SMCRA sections 503 and 505, and the Federal regulations at 30 CFR 730.5, establish the criteria for approval of State SMCRA programs. A State program must set forth requirements that satisfy the Federal minimum standards and must include provisions that are no less stringent than SMCRA and no less effective than the Federal regulations.

The following is a summary of the proposed statutory and rule changes submitted

by Montana, as well as OSM's findings concerning Montana's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. For the reasons discussed below, we are approving the amendment.

A. MCA 82-4-222 – Permit application – Application Revisions

Senate bill 92, passed in the 2013 Montana legislature and as submitted as part of this formal program amendment, contained some provisions that were already reviewed and approved by OSM (84 FR 56689). Those provisions include the changes proposed by Montana in their formal program amendment submittal SATS No. MT-035-FOR and include the changes in MCA 82-4-222(1)(k), MCA 82-4-222 (1)(l), MCA 82-4-222 (1)(r)(2), MCA 82-4-222 (1)(r)(2)(l), MCA 82-4-222 (1)(r)(2)(m), MCA 82-4-222 (1)(r)(2)(n), and MCA 82-4-222 (1)(r)(8).

B. MCA 82-4-226 – Prospecting Permit

Senate bill 92, passed in the 2013 Montana legislature and as submitted as part of this formal program amendment, contained provisions that were already reviewed and approved by OSM (84 FR 56689). Those provisions include the changes proposed by Montana in their formal program amendment submittal SATS No. MT-035-FOR and include the changes in MCA 82-4-226(2), (7), MCA 82-4-226 (7)(b)(i), and MCA 82-4-226 (7)(b)(ii).

C. MCA 82-4-227 – Refusal of Permit – Applicant Violator System

Senate bill 92, passed in the 2013 Montana legislature and as submitted as part of this formal program amendment, contained provisions that were already reviewed and approved by OSM (84 FR 56689). Those provisions include the changes proposed by Montana in their formal program amendment submittal SATS No. MT-035-FOR and include the changes in MCA 82-4-227(8). Our findings related to the remaining changes in Senate bill 92 follow.

Montana proposes to add language to the MCA 82-4-227 under the Montana Strip

and Underground Mine Reclamation Act (MSUMRA). New language in subsection (14) of MCA 82-4-227 allows a person listed in the Applicant Violator System as owning or controlling a strip-mining or underground mining operation to challenge the ownership or control listing. This subsection also outlines the responsibilities of the Montana Department of Environmental Quality (MDEQ), which is the State regulatory authority in Montana, pertaining to a challenge to ownership or control listings as well as hearing rights of the person listed in the Applicant Violator System once receiving a response from the MDEQ on that challenge.

During our review of this provision in Montana's July 28, 2021 amendment submittal, we found that Montana would need to include clarifying language in this proposed statute similar to language found in 30 CFR 773.26(b), which clarifies that the provisions of this section apply only to challenges to ownership or control listings or findings and that these provisions may not be used to challenge liability or responsibility under any other provision of the Act or its implementing regulations. On May 3, 2023, Montana made this required change in their resubmittal of the formal program amendment with this clarifying language.

This provision of Montana's amendment (as submitted on July 28, 2021, and as revised on May 3, 2023) summarizes the Federal counterpart rules which address how to challenge ownership and control findings and listings in the Applicant Violator System, requirements of the applicant and regulatory authority, and clarifying language similar to 30 CFR 733.26(b), and we find these provisions to be no less effective than counterpart Federal regulations. This statutory provision is therefore in accordance with SMCRA and consistent with the Federal regulations, and we are therefore approving the incorporation of MCA § 82-4-227, subsection 14, into the Montana program.

D. Minor Revisions to the ARM

In its program amendment submission, Montana proposes recodifications and

other minor wording, editorial, punctuation, grammatical, citation, and cross-reference changes in ARM 17.24.301, which will define terms related to the Applicant Violator System and to also clarify and streamline existing definitions. No substantive changes to the text of these rules were proposed. Because these changes are minor, and, as explained in more detail below, OSM finds that the proposed changes are no less stringent than SMCRA and no less effective than the counterpart Federal regulations. Therefore, we are approving the following proposed rule changes.

- ARM 17.24.301 (13); added new “applicant violator system” definition. ARM 17.24.301 (13) to ARM 17.24.301 (14); recodification and deletion of “approximate original contour” definition; refer reader to definition of “approximate original contour” in MCA 82-4-203. ARM 17.24.301 (14) to ARM 17.24.301 (15); recodify “aquifer” definition. ARM 17.24.301 (15) to ARM 17.24.301 (16); recodify “area of land affected” definition. ARM 17.24.301 (16) to ARM 17.24.301 (17); recodify “arid and semiarid area” definition. ARM 17.24.301 (17) to ARM 17.24.301 (18); recodify “auger mining” definition. ARM 17.24.301 (18) to ARM 17.24.301 (19); recodify “bench” definition. ARM 17.24.301 (19) to ARM 17.24.301 (20); recodify “best technology currently available or BTCA” definition. ARM 17.24.301 (20) to ARM 17.24.301 (21); recodify “cemetery” definition. ARM 17.24.301 (21) to ARM 17.24.301 (22); recodify “coal conservation plan” definition. ARM 17.24.301 (22) to ARM 17.24.301 (23); recodify “coal preparation and coal preparation plant” definition. ARM 17.24.301(23) to ARM 17.24.301 (24); recodify “coal processing waste” definition. ARM 17.24.301(24) to ARM 17.24.301 (25); recodify “collateral bond” definition. ARM 17.24.301(25) to ARM 17.24.301 (26); recodify “combustible material” definition. ARM 17.24.301(26) to ARM 17.24.301 (27); recodify “community or institutional building” definition. ARM 17.24.301(27) to

ARM 17.24.301 (28); recodify “contour strip mining” definition. ARM 17.24.307(28) to 17.24.301 (29); added new definition of “control or controller”. ARM 17.24.301 (30); recodify “cover” definition. ARM 17.24.301 (29) to ARM 17.24.301 (31); recodify “cultural resources” definition. ARM 17.24.301 (30) to ARM 17.24.301 (32); recodify “cumulative hydrologic impacts” definition. ARM 17.24.301 (31) to ARM 17.24.301 (33); recodify “cumulative hydrologic impact area” definition. ARM 17.24.301 (32) to ARM 17.24.301 (34); recodify “disturbed area” definition. ARM 17.24.301 (33) to ARM 17.24.301 (35); recodify “diversion” definition. ARM 17.24.301 (34) to ARM 17.24.301 (36); recodify “domestic water supply” definition. ARM 17.24.301 (35) to ARM 17.24.301 (37); recodify “downslope” definition. ARM 17.24.301 (36) to ARM 17.24.301 (38); recodify “dwelling” definition. ARM 17.24.301 (37) to ARM 17.24.301 (39); recodify “embankment” definition. ARM 17.24.301 (38) to ARM 17.24.301 (40); recodify “ephemeral drainageway” definition. ARM 17.24.301 (39) to ARM 17.24.301 (41); recodify “essential hydrologic functions” definition. ARM 17.24.301 (40) to ARM 17.24.301 (42); recodify “excess spoil” definition. ARM 17.24.301 (41) to ARM 17.24.301 (43); recodify “farm” definition. ARM 17.24.301 (42) to ARM 17.24.301 (44); recodify “federal coal regulatory authority” definition. ARM 17.24.301 (43) to ARM 17.24.301 (45); recodify “flood irrigation” definition. ARM 17.24.301 (44) to ARM 17.24.301 (46); recodify “fragile lands” definition. ARM 17.24.301 (45) to ARM 17.24.301 (47); recodify “fugitive dust” definition. ARM 17.24.301 (46) to ARM 17.24.301 (48); recodify “good ecological integrity” definition. ARM 17.24.301 (47) to ARM 17.24.301 (49); recodify “ground water” definition. ARM 17.24.301 (48) to ARM 17.24.301 (50); recodify “habitat or characteristic pattern” definition. ARM 17.24.301 (49) to ARM 17.24.301 (51); recodify “head-of-hollow fill” definition.

ARM 17.24.301 (50) to ARM 17.24.301 (52); recodify “higher or better uses” definition. ARM 17.24.301 (51) to ARM 17.24.301 (53); recodify “highwall” definition. ARM 17.24.301 (52) to ARM 17.24.301 (54); recodify “historic lands” definition. ARM 17.24.301 (53) to ARM 17.24.301 (55); recodify “historically used for cropland” definition. ARM 17.24.301 (54) to ARM 17.24.301 (56); recodify and delete “hydrologic balance” definition; refer reader to definition of “hydrologic balance” in MCA 82-4-203. ARM 17.24.301 (55) to ARM 17.24.301 (57); recodify “hydrologic regime” definition. ARM 17.24.301 (56) to ARM 17.24.301 (58); recodify “imminent danger to the health and safety of the public” definition. ARM 17.24.301 (57) to ARM 17.24.301 (59); recodify “impoundment” definition. ARM 17.24.301 (58) to ARM 17.24.301 (60); recodify “inactive mining operation” definition. ARM 17.24.301 (59) to ARM 17.24.301 (61); recodify “incidental boundary revision” definition. ARM 17.24.301 (60) to ARM 17.24.301 (62); recodify “intermittent stream” definition. ARM 17.24.301 (61) to ARM 17.24.301 (63); recodify “in situ processing” definition. ARM 17.24.301 (62) to ARM 17.24.301 (64); recodify “irreparable damage to the environment” definition. ARM 17.24.301 (63) to ARM 17.24.301 (65); recodify “knowingly” definition; remove “an individual” in the definition and replace with “a person”. ARM 17.24.301 (64) to ARM 17.24.301 (66); recodify “land use” definition. ARM 17.24.301 (65) to ARM 17.24.301 (67); recodify “major revision” definition. ARM 17.24.301 (66) to ARM 17.24.301 (68); recodify “material damage” definition as it relates to the ARM subchapter 9 rules (Strip and Underground Mine Reclamation Act: Underground Coal and Uranium Mining). ARM 17.24.301 (67) to ARM 17.24.301 (69); recodify “material damage” definition as defined in MCA 82-4-203. ARM 17.24.301 (68) to ARM 17.24.301 (70); recodify “materially damage the quantity or quality of

water” definition. ARM 17.24.301 (69) to ARM 17.24.301 (71); recodify “mine plan area” definition. ARM 17.24.301 (70) to ARM 17.24.301 (72); recodify “mineral” definition. ARM 17.24.301 (71) to ARM 17.24.301 (73); recodify “minor revision” definition. ARM 17.24.301 (72) to ARM 17.24.301 (74); recodify “mulch” definition. ARM 17.24.301 (73) to ARM 17.24.301 (75); recodify “natural hazard lands” definition. ARM 17.24.301 (74) to ARM 17.24.301 (76); recodify “non-commercial building” definition. ARM 17.24.301 (75) to ARM 17.24.301 (77); recodify “noxious plants” definition. ARM 17.24.301 (76) to ARM 17.24.301 (78); recodify “occupied residential dwelling and structures related thereto” definition. ARM 17.24.301 (77) to ARM 17.24.301 (79); recodify “operation” definition. ARM 17.24.301 (78) to ARM 17.24.301 (80); recodify “operator” definition. ARM 17.24.301 (79) to ARM 17.24.301 (81); recodify “other treatment facilities” definition. ARM 17.24.301 (80) to ARM 17.24.301 (82); recodify “outslope” definition. ARM 17.24.301 (81) to ARM 17.24.301 (83); recodify “overburden” definition. ARM 17.24.301 (82) to ARM 17.24.301 (84); reword the definition of “owned, controlled and owns or controls by removing “owned”, “controlled”, and “owns or controls” and adding “own, owner or ownership”; recodify new “own, owner, or ownership” definition. ARM 17.24.301 (83) to ARM 17.24.301 (85); recodify “perennial stream” definition. ARM 17.24.301 (84) to ARM 17.24.301 (86); recodify “permanent diversion” definition. ARM 17.24.301 (85) to ARM 17.24.301 (87); recodify “permanent impoundment” definition. ARM 17.24.301 (86) to ARM 17.24.301 (88); recodify “permit area” definition. ARM 17.24.301 (87) to ARM 17.24.301 (89); recodify “person having an interest which is or may be adversely affected or person with a valid legal interest” definition. ARM 17.24.301 (88) to ARM 17.24.301 (90); recodify “precipitation event” definition. ARM 17.24.301 (89) to

ARM 17.24.301 (91); recodify “previously mined area” definition. ARM 17.24.301 (90) to ARM 17.24.301 (92); recodify “prime farmland” definition. ARM 17.24.301 (91) to ARM 17.24.301 (93); recodify “principal shareholder” definition. ARM 17.24.301 (92) to ARM 17.24.301 (94); recodify “probable hydrologic consequences” definition. ARM 17.24.301 (93) to ARM 17.24.301 (95); recodify “productivity” definition. ARM 17.24.301 (94) to ARM 17.24.301 (96); recodify “prospecting” definition. ARM 17.24.301 (95) to ARM 17.24.301 (97); recodify “public building” definition. ARM 17.24.301 (96) to ARM 17.24.301 (98); recodify “public office” definition. ARM 17.24.301 (97) to ARM 17.24.301 (99); recodify “public park” definition. ARM 17.24.301 (98) to ARM 17.24.301 (100); recodify “railroad loop” definition. ARM 17.24.301 (99) to ARM 17.24.301 (101) recodify “rangeland” definition. ARM 17.24.301 (100) to ARM 17.24.301 (102); recodify “recharge capacity” definition. ARM 17.24.301 (101) to ARM 17.24.301 (103); recodify “reclamation” definition. ARM 17.24.301 (102) to ARM 17.24.301 (104); recodify “recurrence interval” definition. ARM 17.24.301 (103) to ARM 17.24.301 (105); recodify “reference area” definition. ARM 17.24.301 (104) to ARM 17.24.301 (106); recodify “remining” definition. ARM 17.24.301 (105) to ARM 17.24.301 (107); recodify “renewable resource lands” definition. ARM 17.24.301 (106) to ARM 17.24.301 (108); recodify “replace adversely affected domestic water supply” definition. ARM 17.24.301 (107) to ARM 17.24.301 (109); recodify “road” definition and add “subcategories of roads are as follows:” clarifying language to the definition. ARM 17.24.301 (108) to ARM 17.24.301 (110); recodify “safety factor” definition. ARM 17.24.301 (109) to ARM 17.24.301 (111); recodify “sediment” definition. ARM 17.24.301 (110) to ARM 17.24.301 (112); recodify “sedimentation pond” definition. ARM 17.24.301 (111) to ARM 17.24.301 (113);

recodify “significant, imminent environmental harm to land, air or water resources” definition. ARM 17.24.301 (112) to ARM 17.24.301 (114); recodify “soil” definition. ARM 17.24.301 (113) to ARM 17.24.301 (115); recodify “soil horizon” definition. ARM 17.24.301 (114) to ARM 17.24.301 (116); recodify “soil survey” definition. ARM 17.24.301 (115) to ARM 17.24.301 (117); recodify “spoil” definition. ARM 17.24.301 (116) to ARM 17.24.301 (118); recodify “stabilize” definition. ARM 17.24.301 (117) to ARM 17.24.301 (119); recodify “subirrigation” definition. ARM 17.24.301 (118) to ARM 17.24.301 (120); recodify “subsidence” definition. ARM 17.24.301 (119) to ARM 17.24.301 (121); recodify “substantial legal and financial commitments” definition. ARM 17.24.301 (120) to ARM 17.24.301 (122); recodify and add “of uranium prospecting holes” and “Drilling of coal prospecting holes and installation and use of associated disposal pits or installation of ground water monitoring wells does not constitute substantial disturbance” to the definition of “substantially disturb”. Montana’s proposal to add language to this definition in relation to prospecting permits conforms to the changes reviewed and approved by OSM in the *Federal Register* (84 FR 56689). ARM 17.24.301 (121) to ARM 17.24.301 (123); recodify “successor in interest” definition. ARM 17.24.301 (122) to ARM 17.24.301 (124); recodify “surety bond” definition. ARM 17.24.301 (123) to ARM 17.24.301 (125); recodify “surface water” definition. ARM 17.24.301 (124) to ARM 17.24.301 (126); recodify “suspended solids or nonfilterable residue” definition. ARM 17.24.301 (125) to ARM 17.24.301 (127); recodify “temporary diversion” definition. ARM 17.24.301 (126) to ARM 17.24.301 (128); recodify “temporary impoundment” definition. ARM 17.24.301 (127) to ARM 17.24.301 (129); recodify “test pit” definition. ARM 17.24.301 (128) to ARM 17.24.301 (130); recodify “toxic-forming materials” definition. ARM 17.24.301 (129) to

ARM 17.24.301 (131); recodify “toxic mine drainage” definition. ARM 17.24.301 (130) to ARM 17.24.301 (132); recodify and remove “in ownership or other effective control over the right to conduct strip or underground mining operations under a permit issued by the department” and add “of a permittee” to “transfer, assignment, or sale of permit rights” definition. ARM 17.24.301 (131) to ARM 17.24.301 (133); recodify “unconsolidated streamlaid deposits holding streams” definition. ARM 17.24.301 (132) to ARM 17.24.301 (134); recodify “underground development waste” definition. ARM 17.24.301 (133) to ARM 17.24.301 (135); recodify “undeveloped rangeland” definition. ARM 17.24.301 (134) to ARM 17.24.301 (136); recodify “unwarranted failure to comply” definition. ARM 17.24.301 (135) to ARM 17.24.301 (137); recodify “upland areas” definition. ARM 17.24.301 (136) to ARM 17.24.301 (138); recodify “valley fill” definition. ARM 17.24.301 (137) to ARM 17.24.301 (139); recodify “valid existing rights” definition. ARM 17.24.301 (138) to ARM 17.24.301 (140); recodify “violation notice” definition. ARM 17.24.301 (140) to ARM 17.24.301 (142); recodify “waste” definition. ARM 17.24.301 (141) to ARM 17.24.301 (143); recodify “waste disposal structure” definition. ARM 17.24.301 (142) to ARM 17.24.301 (144); recodify “water table” definition. ARM 17.24.301 (143) to ARM 17.24.301 (145); recodify “wildlife habitat enhancement feature” definition. ARM 17.24.301 (144) to ARM 17.24.301 (146); recodify “willful violation” definition. ARM 17.24.301 (145) to ARM 17.24.301 (147); recodify “willfully” definition; strike the words “an individual” and add the word “person” to the definition. These changes are no less stringent than SMCRA and no less effective than the requirements found in the counterpart Federal regulations.

- ARM 17.24.302 (1) – Montana proposed to add the language “submitted in a format acceptable to the department”. This change is no less stringent than

SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 777.11(a)(3).

- ARM 17.24.304 (1)(f)(iv)(i) to ARM 17.24.304 (1)(g); recodification. ARM 17.24.304 (1)(f)(iv)(i)(A) to ARM 17.24.304 (1)(g)(i); recodification. ARM 17.24.304 (1)(f)(iv)(i)(B) to ARM 17.24.304 (1)(g)(ii); recodification. ARM 17.24.304 (1)(f)(iv)(i)(C) to ARM 17.24.304 (1)(g)(iii); recodification. ARM 17.24.304 (1)(f)(iv)(i)(D) to ARM 17.24.304 (1)(g)(iv); recodification and rule references from (6) to (1)(f), (7)(a)(ii) and (iii) to (1)(g)(ii) and (iii). ARM 17.24.304 (1)(f)(iv)(i)(E) to ARM 17.24.304 (1)(g)(v); recodification and punctuation revisions (semi-colon struck and period added). ARM 17.24.304 (1)(f)(iv)(ii); recodification to an additional sentence in ARM 17.24.304 (1)(g)(v); remove the words “in this regard” and add “conducted under (g)”. ARM 17.24.304(1)(j)(iv); minor grammatical changes; remove “through (h)” and add “and (g)”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR part 779.
- ARM 17.24.308(1)(b)(vii); minor grammatical changes; addition of the word “or”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR part 780.
- ARM 17.24.313(1)(h)(x); addition of the language “pursuant to ARM 17.24.724 and 17.24.726”. ARM 17.24.313 (1)(j); minor grammatical changes; remove “(2)” and add “(1)(b)”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR part 780.
- ARM 17.24.314 (1)(c); minor grammatical changes; remove “(5)” and add “(1)(e)”; remove “(6)” and add “(f)”. ARM 17.24.314 (2)(d); minor grammatical

changes; remove “(5)” and add “(1)(e)”; remove “(6)” and add “(f)”; and add a comma after “17.24.645”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR part 780.

- ARM 17.24.401 (3)(b)(ii); minor grammatical changes; add the word “and”. ARM 17.24.401(3)(b)(iii); remove “state the names of the US geological survey 7.5 or 15 minute quadrangle maps that contain the area shown or described, if available; and”. ARM 17.24.401(3)(b)(iv); recodification to ARM 17.24.401(3)(b)(iii). These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 779.24 and 30 CFR 779.25.
- ARM 17.24.403 (2)(c); remove “mine plan” and add the language “proposed mining”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 773.6.
- ARM 17.24.416 (4)(a) to ARM 17.24.416 (4); recodification. ARM 17.24.416 (4)(a)(i) to ARM 17.24.416 (4) (a); recodification. ARM 17.24.416 (4)(a)(ii) to ARM 17.24.416 (4)(b); recodification. ARM 17.24.416 (4)(a)(iii) to ARM 17.24.416 (4)(c); recodification. ARM 17.24.416 (4)(a)(iv) to ARM 17.24.416 (4)(d); recodification. ARM 17.24.416 (4)(a)(iv)(A) to ARM 17.24.416 (4)(d)(i); recodification. ARM 17.24.416 (4)(a)(iv)(B) to ARM 17.24.416 (4)(d)(ii); recodification. ARM 17.24.416 (4)(a)(v) to ARM 17.24.416 (4)(e); recodification. ARM 17.24.416 (4)(a)(vi) to ARM 17.24.416 (4)(f); recodification. ARM 17.24.416 (4)(a)(vii) to ARM 17.24.416 (4)(g); recodification. ARM 17.24.416 (4)(a)(viii) to ARM 17.24.416 (4)(h); recodification. ARM 17.24.416 (4)(i); add the language “the department determines following an eligibility review and determination as described in ARM 17.24.1265, that the owner or operator is not

eligible for a permit,”. ARM 17.24.416 (4)(b) to ARM 17.24.416 (5); recodification. ARM 17.24.416 (4)(c) to ARM 17.24.416 (6); recodification. ARM 17.24.416 (4)(d) to ARM 17.24.416 (7); recodification. ARM 17.24.416 (5) to ARM 17.24.416 (8); recodification. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 774.15.

- ARM 17.24.418(1); minor grammatical changes; add “,”, remove “or”, and add “, or sale”. ARM 17.24.418(2); minor grammatical changes; add “,”, remove “or”, add “, or sale”, and add “rights”. ARM 17.24.418(2)(b)(iii); minor grammatical changes; remove “subchapter 3” and add “ARM 17.24.303”. ARM 17.24.418(4); minor grammatical changes; add “assignment, or” and remove “, or assignment”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 774.17.
- ARM 17.24.425(1); minor grammatical changes; remove “sale, or” and add “, or sale” and “permit”. Minor grammatical changes; ARM 17.24.425(3); remove “department” and add “board”. ARM 17.24.425(6); minor grammatical changes; remove “department”, add “board”, remove “department”, and add “board”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 775.11.
- ARM 17.24.1201(2); add “Any potential violation observed during an aerial inspection shall be investigated on site within three days, provided that any indication of a violation, condition, or practice that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources shall be investigated immediately. On-site investigations of potential violations observed during an aerial inspection may not be considered to be an

additional partial or complete inspection for the purposes of ARM 17.24.1201.”

These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 840.11(d)(2).

E. Substantive Revisions to the ARM

1. ARM 17.24.301 Definitions

ARM 17.24.301(139) to ARM 17.24.301(141); in addition to the recodification of the definition of “violation,” “failure,” or “refusal”, at ARM 17.24.301(139), to ARM 17.24.301(141), Montana proposed to add reference to ARM 17.24.1265 (proposed rule pertaining to the Applicant Violator System and permit eligibility determinations) in their current definition of violation, failure, or refusal.

Montana’s proposed change to the definition of violation, failure, or refusal would be for the purposes of ARM 17.24.1217 (individual civil penalties) *and* their proposed Applicant Violator System rules, at ARM 17.24.1265. The Federal definition of violation, failure, or refusal is for the purposes of individual civil penalties only and not for the Federal rules that pertain to the Applicant Violator System. As proposed, Montana’s changes to the definition of violation, failure, or refusal would comply with the Federal program in terms of the definition of violation, failure, or refusal for the purposes of individual civil penalties. The addition of the language that would make the definition of violation, failure, or refusal also apply to the proposed regulation at ARM 17.24.1265 would not render the Montana program less stringent than SMCRA or less effective than the Federal regulations. Montana’s current definition of violation, although not as verbose as the Federal definition of violation, still remains all-encompassing and, therefore, at least as effective as the Federal regulations.

Montana’s proposed additions to the ARM, at 17.24.301(1)(a) requiring information of the applicant, applicant’s resident agent (i.e., the person who is designated for accepting service of process), and the applicant’s operator, if any, are consistent with

and as effective as Federal regulations at 30 CFR 778.11. We approve this change. Montana's deletion of the words "the person who will pay the abandoned mine reclamation fee pursuant to 30 USC 1232;" in ARM 17.24.301(1)(a) does not render their program less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 778.11, and we approve this deletion. However, as proposed, ARM 17.24.303(1)(a) still does not require the applicant, applicant's resident agent and applicant's operator taxpayer identification numbers for the pending permit application. ARM 17.24.303(1)(a) requires employer identification numbers of the applicant, applicant's resident agent, and applicant's operator, but not taxpayer identification numbers. To be consistent with and as effective as Federal regulations at 30 CFR 778.11(a)(2), Montana would need to require taxpayer identification numbers for the applicant and operator in ARM 17.24.303(1)(a). We notified Montana of this concern by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and provided us with a follow-up formal program amendment with these required changes (Docket ID: OSM-2021-0006-0007). Because Montana has submitted changes that would require taxpayer identification numbers for the applicant and operator in ARM 17.24.303(1)(a), we find that these proposed changes with revisions would be no less stringent than SMCRA and no less effective as the Federal regulations at 30 CFR 778.11(a)(2) and approve these changes.

2. ARM 17.24.303 Legal, Financial, Compliance, and Related Information

ARM 17.24.303(1)(e) – Montana proposed to delete the language in ARM 17.24.303(1)(e), which required "the names and addresses of any persons who are engaged in strip or underground mining on behalf of the applicant and any person who will conduct such operations should the permit be granted;". This language is no longer needed as these requirements are now in ARM 17.24.303(1)(a). This proposed deletion of ARM 17.24.303(1)(e) would not render their program less stringent than SMCRA or less

effective the Federal regulations at 30 CFR 778.11, and we approve this deletion.

Montana also recodified ARM 17.24.303(1)(f) to ARM 17.24.303(1)(e) and added the requirement that in addition to the applicant, the operator also provide business entity information. We approve this recodification.

In new ARM 17.24.303(1)(f), Montana has proposed adding “each business entity in the applicant’s an/or operator’s organizational structure, up to and including the ultimate parent entity of the applicant and operator, for every such business entity, the applicant must also provide the required information for every president, chief executive officer, and director (or persons in similar positions), and every person who owns, or records, 10 percent or more of the entity;”. This language is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.11, specifically 30 CFR 778.11(c). The terms “partner” and “member” were omitted from the rule that Montana as initially proposed. The Federal regulations at 30 CFR 778.11(c) include these terms, and so Montana would need to include these terms in their proposed rule for their rule to be consistent with the Federal regulations. We notified Montana of this concern by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with these required changes (Docket ID: OSM-2021-0006-0007). Because Montana has now submitted changes that would also require partners and members to provide the required information, we find that these proposed changes with revisions to be no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.11(c), and we approve these changes.

In new ARM 17.24.303(1)(g), Montana proposed to add certain language, but the language initially submitted had numerous typos and grammatical errors that were pointed out by OSM in our concern letter to Montana dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and

resubmitted a revised program amendment with corrections (Docket ID: OSM-2021-0006-0007). As revised, this rule states: “a list of all names under which the applicant, operator, partners or principal shareholders, and operator’s partners or principal shareholders who operate or previously operated a surface coal mine operation in the United States within the five-year period preceding the date of submission of the application.” Because the revised language is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.11, we approve these changes.

In ARM 17.24.303(1)(g)(i)-(iv), Montana proposed minor changes to these rules. As submitted, the changes in ARM 17.24.303(1)(g)(i) contained a minor typographical error. We notified Montana of the typo by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with the necessary correction (Docket ID: OSM-2021-0006-0007). In addition, Montana’s revised program amendment also proposed to add the requirement that the person’s phone number be included, along with other information for each name on the permit application. These changes are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.11, and we approve both.

Montana also proposed, and we approve, the following changes:

- deletion of the requirement that the persons named in the application provide the control relationship to the applicant in ARM 17.24.303(1)(g)(ii),
- addition of language in ARM 17.24.303(1)(g)(iv) requiring the applicant to submit information related to the regulatory authority with jurisdiction over the permit,
- deletion of the unneeded owner or controller or previously owned or controlled language in ARM 17.24.303(1)(g)(iv), and;

- addition of the requirement at ARM 17.24.303(1)(h) that persons on the application provide additional information for persons who operate or previously operated coal mining and reclamation operations in the United States within the five years preceding the date of the application.

We approve these proposed additions and deletions as they are no less stringent than SMCRA and no less effective than the Federal regulations, including 30 CFR 778.12.

Montana's proposed recodification, from ARM 17.24.303(1)(i) to ARM 17.24.303(1)(j), has no substantive effect and is in accordance with SMCRA and consistent with the Federal regulations at 30 CFR 778.11 and 30 CFR 778.13. Thus, we approve these changes.

Montana proposed to recodify ARM 17.24.303(1)(j) to ARM 17.24.303(1)(k), and to keep permit application information confidential, including interests or the holding of lands that share a common border with the permit. We approve these changes as they are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.13.

Montana's proposed recodification from ARM 17.24.303(1)(k) to ARM 17.24.303(1)(l) has no substantive effect and would not render their program less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 778.11 and 30 CFR 778.13. We approve these changes.

Montana also proposed to recodify ARM 17.24.303(1)(l) to ARM 17.24.303(1)(m) and proposed new language at ARM 17.24.303(1)(m) to require information from the permit applicant related to permit suspensions, revocations, or performance bond forfeiture for a five-year period preceding the date of the application. The facts involved in each case must also be submitted. Montana also proposed new language in ARM 17.24.303(1)(m)(i), which describes what specific information is required to be submitted if a permit suspension, revocation, or performance bond

forfeiture has occurred. Finally, Montana proposed to delete the requirement that the permit issuance date be included with the specific information to be submitted in the event a permit suspension, revocation, or performance bond forfeiture had occurred. Montana's recodification and proposed additions and minor deletion to the ARM, at 17.24.303(1)(m), are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.14. We approve these changes.

Montana proposed to recodify ARM 17.24.303(1)(m) to ARM 17.24.303(1)(n) and to add new language at ARM 17.24.303(1)(n) to require information pertaining to violation notices the applicant or operator has received during the three-year period preceding the date of the permit application as well as current unabated or uncorrected violation notices. Montana has added the requirement that the applicant or operator provide identification numbers of the violation notices mentioned above and removed the requirement that the Mine Safety and Health Administration number of the violation also be included (ARM 17.24.303(1)(n)(i)). Montana has also added the requirement that if applicable, current violation abatement information be included. Montana's recodification and proposed additions and minor deletions to the ARM, at 17.24.303(1)(n), are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.14. We approve these changes.

Montana's recodifications to the ARM at 17.24.303(1)(o), ARM 17.24.303(1)(p), and ARM 17.24.303(1)(q) have no effect and would not render their program less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 778.14. We approve these changes.

Montana proposed minor changes to the ARM, at 17.24.303(1)(r), about mining within 100 feet of a public road and specifying that the requirements of ARM 17.24.1134, ARM 17.24.1135, and ARM 17.24.1136 would apply. Montana's recodification and proposed additions and deletions to the ARM at 17.24.303(1)(r) are no

less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.16. In addition, the cross-references in the ARM at 17.24.303(1)(r) are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.16, which references 30 CFR 761.14 and 761.15. We approve these changes.

Montana proposed to recodify ARM 17.24.303(1)(r) to ARM 17.24.303(1)(s); ARM 17.24.303(1)(s) to ARM 17.24.303(1)(t); ARM 17.24.303(1)(t) to ARM 17.24.303(1)(u); ARM 17.24.303(1)(u) to ARM 17.24.303(1)(v); ARM 17.24.303(1)(v) to ARM 17.24.303(1)(w); ARM 17.24.303(1)(w) to ARM 17.24.303(1)(x); ARM 17.24.303(1)(x) to ARM 17.24.303(1)(y); and ARM 17.24.303(1)(y) to ARM 17.24.303(1)(z). These recodifications have no substantive effect and would be in accordance with SMCRA and consistent with the Federal regulations at 30 CFR part 778. We approve these changes.

3. ARM 17.24.1229 Criminal Penalties and Civil Actions

Montana is proposing to add a new provision at ARM 17.24.1229(1) that would add alternative enforcement provisions to their existing rules. ARM 17.24.1229(1) directs MDEQ to update the Applicant Violator System when a court enters a judgment against or convicts a person under the MCA for a civil penalty resulting from a violation under Part 1 (82-4-141), permit suspension (82-4-251), or civil penalty resulting from a violation under Part 2 (82-4-254). Montana's proposed new language at ARM 17.24.1229(1) is no less stringent than SMCRA and no less effective the Federal regulations at 30 CFR 847.2(a). We approve these changes.

Montana's proposed new rule at ARM 17.24.1229(2) that specifies that the existence of a performance bond or bond forfeiture could not be the only reason for deciding against using alternative enforcement, is also no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 847.2(b). We approve these changes.

Montana's proposed new rule at ARM 17.24.1229(3) provides that this rule would not preclude the use of other State of Montana or Federal laws about other enforcement or procedures and is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 847.2(d). We approve these changes.

Montana's proposed new rule at ARM, at 17.24.1229 (4) states that "MDEQ may request a criminal justice agency to pursue criminal penalties pursuant to 82-4-141(3) or 82-4-251(6) or (7) MCA." The MCA, at 82-4-141(3), pertains to persons that purposely or knowingly violate any of the provisions of MCA 82-4-141 or order adopted under the same regulation that has become final. The MCA, at 82-4-251(6), pertains to notices (violations) or orders (cessation orders). The MCA, at 82-4-251(7), pertains to attorney fees. The Federal regulations at 30 CFR 847.11 apply a willful or knowing standard before pursuing criminal penalties. The ARM, at 17.24.1229(4), citing MCA 82-4-251(6) does not appear to use the willful or knowing standard before pursuing criminal penalties. To the extent that the willful or knowing standard is not necessary before pursuing criminal penalties in Montana, this provision would be more stringent than SMCRA, and it would be no less effective than the Federal regulations at 30 CFR 847.11.

As proposed, Montana's new language at ARM 17.24.1229(4) appears to cite incorrect references to the MCA. The referenced section, MCA 82-4-251(7), in the proposed rule at ARM 17.24.1229(4) pertains to attorney fees. We notified Montana of this typo by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with the citation corrected (Docket ID: OSM-2021-0006-0007). Montana proposes to now cite MCA 82-4-254(6) or (7) in the ARM 17.24.1229(4) instead of MCA 82-4-251(6) or (7). This correction is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 847.11(c), and we approve this change.

Montana proposed new language at ARM 17.24.1229(5), when applied in

conjunction with the referenced MCA provisions at 82.4.254(3)(c) and (4), is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 847.11 and 30 CFR 847.16. We therefore approve these changes.

4. ARM 17.24.1264 MDEQ's Obligations Regarding the Applicant Violator System

Montana's proposed new rule at ARM 17.24.1264 outlines the requirements of Montana about data entry into the Applicant Violator System, including permit applicant and operator information, permit history information, unabated or uncorrected violation information, and other information identified in the review of the permit application. Timelines for data entry, preliminary findings of ownership or control, and timeframes for owner or controller challenges to a finding by Montana are also included. Finally, Montana included requirements to include information regarding judgments or convictions, as well as permanent permit ineligibility into the Applicant Violator System. Montana's proposed new language at ARM 17.24.1264 is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.8 and 30 CFR 774.11 (c) through (h). In addition, when ARM 17.24.1264 is applied with Montana's new statute, MCA 82-4-227(14), which corresponds to section 510(c) of SMCRA and 30 CFR 774.11(c) through (e) pertaining to permanent permit ineligibility, it is no less stringent than SMCRA and no less effective than the Federal regulations. We, therefore, approve these changes.

5. ARM 17.24.1265 MDEQ's Eligibility Review

Montana has proposed a new rule, at ARM 17.24.1265 (1)(a)-(d), which outlines Montana's requirements in making permit eligibility determinations and the information used in making such determinations. The new rule references permit information requirements in ARM 17.24.303, the Applicant Violator System, and other information available to Montana including ownership and control information, permit history, previous mining experience, compliance history with SMCRA and MSUMRA, permits,

and air or water quality laws. This new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.9, 30 CFR 773.10, 30 CFR 773.11, and 30 CFR 773.12. Therefore, we approve these changes.

Montana has proposed new language at ARM 17.24.1265 (2) giving Montana the authority to conduct additional reviews for an applicant and operator that have no previous mining experience in determining permit eligibility. This provision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.10. We approve this rule.

Montana has proposed new language at ARM 17.24.1265 (3)(a)-(c), which relates to permanent permit ineligibility and the reasons for making a permanent permit ineligibility decision. The new rule references MCA 82-4-227(12), ARM 17.24.405(6)(h), and generally references SMCRA and MSUMRA. After review of this proposed new rule, we notified Montana of two typos by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with these corrections. (Docket ID: OSM-2021-0006-0007). This revised proposed new rule is now no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.12, which references section 510(c) of SMCRA, and 30 CFR 773.9, 773.10, 773.11, 773.13, 773.14, 774.11(c), 773.15, 778.9(d), and 773.19, as well as the general appeal rights in 30 CFR part 775 and 43 CFR 4.1360 through 4.1369. We approve these changes.

Montana has proposed new language at ARM 17.24.1265 (4)(a)-(b), which provides for an additional review after permit approval but before permit issuance. This review relies on permit information requirements found in the ARM, at 17.24.303(1)(a), (c), (d), (g), (h), (i), (k), Montana's new Applicant Violator System rules at ARM 17.24.1264(1), and compliance history from the Applicant Violator System. The review must also be conducted within five business days before permit issuance under ARM

17.24.405. After review of this new rule, we notified Montana of one typo by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and Montana resubmitted a revised program amendment with this correction. (Docket ID: OSM-2021-0006-0007). This revised proposed new rule is now no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.9(d), which also references 30 CFR 778.11 through 30 CFR 778.14. We approve these changes.

Montana has proposed new rule at ARM 17.24.1265(5)(a)-(b) that outlines steps to be taken by Montana and the applicant when MDEQ makes a finding that the applicant is ineligible for a permit. When such a finding is made under the proposed new rule, Montana must provide written notification of the decision to the applicant with appeal rights and procedures. The applicant can also challenge a permit ineligibility finding under this new rule as outlined in ARM 17.24.1266(12). This proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.9(b) and 30 CFR 773.25, and we approve these changes.

6. ARM 17.24.1266 Questions About and Challenges to Ownership or Control Findings

Montana has proposed a new rule, at ARM 17.24.1266(1), that provides procedures for inquiries about owner or controller listings in the Applicant Violator System. This proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.26(e), and we approve this change.

Montana has proposed new language at ARM 17.24.1266(2)(a)-(b) that outlines procedures for challenging owner or controller findings in the Applicant Violator System, as well as the tribunal that would hear such a challenge. This rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.25, and we approve this change.

Montana has proposed new language at ARM 17.24.1266(3)(a)-(b) that provides

procedures for challenges to ownership or control listing in the Applicant Violator System that fall under Montana jurisdiction. This new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.26, and we approve this change.

Montana has proposed new language at ARM 17.24.1266(4) that outlines the requirements for challenging ownership and control designations made by another regulatory authority. This rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.26, and we approve this change.

Montana has proposed new language at ARM 17.24.1266(5)(a)-(b) that lists the requirements that must be met to challenge Montana's finding or a listing of ownership and control. This rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.27.

Montana has proposed new language at ARM 17.24.1266(6) that further defines the burden of proof requirements for a person who challenges Montana's finding or listing of ownership and control. This addition is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.27.

Montana has proposed new language at ARM 17.24.1266(7)(a)-(d) that further explains the burden of proof needed in challenges to Montana's finding or listing of ownership and control. After review of this new rule, we notified Montana of one typo by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with this correction. (Docket ID: OSM-2021-0006-0007). With this correction, we have determined that this proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.27, and we approve these changes.

Montana has proposed new language at ARM 17.24.1266(8) that outlines what Montana does when it receives a written challenge to an ownership or control listing.

This provision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.28. We approve this change.

Montana has proposed new language at ARM 17.24.1266(9) that allows MDEQ to consult with other regulatory authorities about challenges to ownership or control listings where a violation is in a different jurisdiction. After review of this new rule, we notified Montana of one typo by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with this correction. (Docket ID: OSM-2021-0006-0007). As revised, this proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.26(c). We approve these changes.

Montana has proposed new language at ARM 17.24.1266(10) that requires Montana to provide all decisions made under this rule to the Applicant Violator System. After review of this new rule, we notified Montana of one suggested edit by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with our suggested edit incorporated into this new rule (Docket ID: OSM-2021-0006-0007). With this revision, this proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.28(d). We approve these changes.

Montana has proposed new language at ARM 17.24.1266(11) that requires Montana, upon completion of a written decision under this rule, to review the information in the Applicant Violator System for accuracy. This new language is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.28(f), and we approve this change.

Montana has proposed new language at ARM 17.24.1266(12) that extends hearing rights to applicants, permittees, or persons that may be adversely affected by a decision from Montana under this new rule. After review of this initial program

amendment submission, we notified Montana of two typos by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with corrections (Docket ID: OSM-2021-0006-0007). As revised, this proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.28(e). We approve these changes.

We note, however, that even with proposed ARM 17.24.1266 , additional language similar to 30 CFR 773.26(b), which specifies that applicants can only use the procedures set forth in 30 CFR 773.26 through 773.28 to challenge ownership and control findings and not for any challenge to liability or responsibility under any other provision of the Act or its implementing regulations, should be considered for inclusion in Montana’s rule. We notified Montana of this deficiency in a letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with the addition of ARM 17.24.1266(13), which states: “The provisions of this section apply only to challenges to ownership or control listings or findings. These provisions may not be used to challenge liability or responsibility under any other provision of MSUMRA or its implementing regulations.” (Docket ID: OSM-2021-0006-0007). As revised, this rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.26(b). We approve this addition.

7. ARM 17.24.1267 Information Requirements for Permittees

Montana has proposed new language at ARM 17.24.1267(1)(a)-(g) that would require permittees to update applicant or operator information in the Applicant Violator System after receiving a cessation order. This revision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.12, which require updates to information required under 30 CFR 778.11. Information requirements under

30 CFR 778.11 are found in State counterpart rules at ARM 17.24.303. We approve these changes.

Montana has proposed new language at ARM 17.24.1267(2) that would not require the permittee to provide the updated information required of the ARM 17.24.1267(1) (a)-(g) if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect. This proposal is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.12(b). We approve this change.

Montana has proposed new language at ARM 17.24.1267(3)(a)-(b) that requires the permittee to update information within 60 days of any addition, departure, or change of any person identified in the ARM 17.24.1267(1)(e). This proposal is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.12(c). We approve this change.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received two general comments about the mining industry and regulation in Montana. These comments do not require a response.

Federal Agency Comments

On August 5, 2021, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. MT-37-06). On August 6, 2021, the U.S. Department of Energy responded that it did not have any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence

from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Montana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on August 5, 2021, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the proposed amendment (Administrative Record No. MT-37-06). On August 5, 2021, the EPA responded that it did not have any comments.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on proposed amendments that may have an effect on historic properties. On August 5, 2021, we requested comments on the proposed Montana amendment from the SHPO and the ACHP (Administrative Record Numbers MT-37-04 and MT-37-05, respectively). On August 16, 2021, the SHPO responded with no comments.

V. OSM's Decision

Based on the above findings, we are approving the submittal that Montana sent to us on July 28, 2021 (Administrative Record No. MT-037-01) as revised by the re-submittal that Montana sent to us on May 3, 2023.

VI. Statutory and Executive Order Reviews

Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule would not affect a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB memorandum M-94-3, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this *Federal Register* document meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency reviews its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this *Federal Register* document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program or amendment that Montana drafted.

Executive Order 13132 - Federalism

This rule has potential federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States.

Montana, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an

amendment to the Montana program submitted and drafted by the State and, thus, is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their Tribal right to self-governance and sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175.

We have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal Government and Tribes. Therefore, consultation under the Department's Tribal consultation policy is not required. The basis for this determination is that our decision is on the Montana State program that does not include the regulation of Indian lands or regulation of activities on Indian lands as that term is defined in 30 U.S.C. 1291(9).

Indian lands are regulated independently under the applicable, approved Federal Indian lands program, with the exception of the Crow Tribe's "Ceded Strip" in Montana. The Ceded Strip is a unique and special situation because, under the terms of the memorandum of understanding, the Department of the Interior and State of Montana agreed to coordinate the administration of applicable surface mining requirements in the Strip. Even though we are approving the amendment and revisions to the original amendment, our action will not have any significant effects on the regulation of surface coal mining operations within the Crow Ceded Strip.

The Departmental Manual, part 512, chapter 4 ("Department of the Interior Policy on Consultation with Indian Tribes") also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate

Tribal stakeholders to devise a constructive approach for consulting on these amendments. Our approval of the amendment and revisions to the original amendment is an action without Tribal implications under section 4.3B of 512 Departmental Manual 4.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a statement of energy effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such

regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

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. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR part 926

Intergovernmental relations, Surface mining, Underground mining.

Marcelo Calle,
Acting Regional Director
Western Region

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

PART 926—MONTANA

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

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

2. Section 926.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *		
July 28, 2021	<u>[Insert date of publication in the Federal Register]</u>	Mont. Code Ann. 82-4-227 – Refusal of Permit – Applicant Violator System. Rulemaking ARM 17.24.301 Definitions, ARM 17.24.302 Format, Data Collection, and Supplemental Information, ARM 17.24.303 Legal, Financial, Compliance, and Related Information, ARM 17.24.416 Permit Renewal, ARM 17.24.418 Transfer of Permits. ARM 17.24.1229 Criminal Penalties and Civil Actions, ARM 17.24.1264 The Department’s Obligations Regarding the Applicant Violator System, ARM 17.24.1265 Department Eligibility Review, ARM 17.24.1266 Questions About and Challenges to Ownership or Control Findings, ARM 17.24.1267 Information Requirements for Permittees, ARM 17.24.304 Baseline Information: Environmental Resources, ARM 17.24.308 Operations Plan, ARM 17.24.313 Reclamation Plan, ARM 17.24.314 Plan for Protection of the Hydrologic Balance , ARM 17.24.401 Filing of Application and Notice, ARM 17.24.403 Informal Conference, ARM 17.24.425 Administrative Review, and

		ARM 17.24.1201 Frequency and Methods of Inspections.
--	--	---

[FR Doc. 2026-02981 Filed: 2/12/2026 8:45 am; Publication Date: 2/13/2026]