

certain materials that must be prepared by engineers, we reviewed the performance standards in Chapters 5 through 10 (*i.e.*, ARM 17.24.501–17.24.1018). We found that in those Chapters, where the exact plans, cross-sections, and maps are specified, preparation and certification by an engineer (as opposed to a surveyor) is specified where required. Therefore, we agree with Montana that qualified licensed professional land surveyors may prepare and certify some of these materials, and those they may not be adequately specified by subsection (2)(b)(ii) of this rule and the specific performance standards of Chapters 5–10 of the rules. Therefore, we approve Montana's proposal.

As noted above, we earlier required Montana to remove this language in a required program amendment codified at 30 CFR 926.16(e)(9). Based on this approval, that requirement is no longer applicable. In addition, 30 CFR 926.16(e)(9) required Montana to revise: (1) The definitions of "head-of-hollow fill" and "valley fill" at ARM 17.24.301; (2) 17.24.321(3) regarding surveyors; and (3) delete an alternate underdrain variance at 17.24.924(14) (now (15)). We note that in this final rule, we have removed the requirement to revise the fill definitions (*see* Finding C.2. above). Further, the Montana program at 17.24.321 and 17.24.924 was revised as required in a final rule published on February 12, 2002 (67 FR 6395). Therefore, all of the changes required by 30 CFR 926.16(e)(9) have been completed or removed. Accordingly, we are removing the required program amendment.

C.5. ARM 17.24.321 Transportation Facilities Plan (30 CFR 780.37/784.24)

In the May 7, 2002, submittal, Montana proposed revisions to combine the requirements for railroad systems (now labeled "railroad loops") with the requirements for roads at ARM 17.24.301, 17.24.321, 17.24.601, 17.24.603, 17.24.605, and 17.24.607. Also, Montana has prescribed that roads performance standards are applicable to haul roads and access roads. In this section concerning transportation facilities plans, Montana has made many editorial revisions to reflect these programmatic changes. In addition, Montana has specified that plans for low-water crossings of perennial and intermittent stream channels must be submitted and demonstrate that protection will be maximized in accordance with the performance standards of the ARM 17.25.600 series. Montana also specifies that ramp roads will be shown on the maps.

The Montana revisions have Federal counterparts at 30 CFR 780.37 (784.24 for underground mines) which require that such information be included in roads systems plans and drawings. The Federal regulations do not specify that railroad systems be included on road systems maps, so Montana is adding an extra requirement. The Federal requirements contain specifications for low-water crossings and intermittent stream channels at 30 CFR 780.37(a) relating to the hydrology performance standards. The Federal regulations at 30 CFR 780.37/784.24 contain the requirement that primary roads be certified by a qualified registered professional engineer with experience in the design and construction of roads. Secondary roads (access roads) need only be shown on road systems maps, and not certified. The Federal definition of "road" at 30 CFR 701.5 excludes "ramp roads."

Therefore, the Director finds that the Montana revisions are no less effective than the Federal counterpart and approves them.

C.6. ARM 17.24.405 Findings and Notice of Decision (30 CFR 926.30)

Montana proposed to delete the requirement that, when an application concerns Federal lands, the Department issue its findings on the same day that the Federal regulatory authority issues its findings. Montana explained that they consider the language proposed for deletion to be obsolete, because the Federal regulatory authority (OSM) no longer prepares written findings on Federal lands, that being the sole responsibility of the State.

Under the Federal Land Program at 30 CFR part 740, and the State-Federal Cooperative Agreement at 30 CFR 926.30, Montana has sole responsibility for findings related to permit approval or denial under SMCRA and OSM retains some responsibilities related to other Federal laws. Further, since the language proposed for deletion did not include the defined term "Federal coal regulatory authority," but rather the undefined term "federal regulatory authority," the language proposed for deletion might possibly refer to other Federal agencies.

Nevertheless, we find that the deleted language was directory, not mandatory. Further, there is no corresponding Federal requirement. This deletion does not affect the authority or jurisdiction of any Federal agency. In particular, we note that under the State-Federal Cooperative Agreement at 30 CFR 926.30 VI.C.3., the Department may approve a SMCRA mining permit prior to Secretarial approval of a mining plan

document, provided that the applicant is advised that authorization to mine is not complete. For these reasons, we find that the deletion is not inconsistent with any Federal requirement, and we approve the deletion.

C.7. ARM 17.24.416 (formerly 26.4.410) Permit renewal (30 CFR 774.15)

Montana proposed to: (1) Move former ARM 17.24.416(2)(c) to (1)(d); (2) eliminate (2)(b) concerning the extension of permit boundaries beyond the existing permit; (3) revise the cross-reference at proposed (2)(c); and (4) make other grammatical revisions.

Montana states that the elimination of (2)(b) concerning amendments to permits is due to its coverage under major permit revisions: All the provisions of ARM 17.24.401–405 and the performance standards of subchapters 3, 5, 6, 7, 8, 9, and 10. Montana reasons that permit renewals and major permit revisions are distinct processes and should be differentiated. The Federal regulations require that any extension to the area covered by the permit, except incidental boundary revisions, shall be made by a new permit application. This is addressed by Montana at ARM 17.24.417(1).

At 30 CFR 774.15 concerning permit renewals, the Federal regulations allow the renewal form to be set by the regulatory authority (RA) with certain minimum requirements necessary for submission. Montana addresses permit application criteria at ARM 17.24.401 to 17.24.405.

Montana states that the revised cross-reference at (2)(c), from the statutes at MCA 82–4–225 and 82–4–232 to ARM 17.24.1104(1), is a correction. This subsection requires that prior to approving a permit renewal, the Department shall require any additional performance bond. The Federal regulations at 30 CFR 774.15(b)(2)(v) contain a similar provision. The other revisions proposed by Montana to ARM 17.24.416 are non-substantive revisions. We believe that the Montana program contains permit renewal and permit revision provisions substantively identical to the Federal regulations. Thus, we find the proposed Montana revisions are no less effective than the Federal regulations and approve the revisions.

C.8. ARM 17.24.501 & 17.24.501A General Backfilling and Grading, Final Grading (30 CFR 816/817.100, .102, 816.101)

Montana proposed to delete rule ARM 17.24.501A, altering and moving some of its provision to rule 17.24.501, and deleting others. Revisions, deletions,