

and additions were also proposed for 17.24.501. Revisions not discussed below are minor editorial or codification changes.

At 17.24.501(1), Montana proposed to delete an allowance for an operator to obtain more time for backfilling and grading; a similar provision was proposed to be added at paragraph (6) and will be discussed below. Montana also proposed to delete a provision that required additional bond in cases of extended time allowance. We note, however, that ARM 17.24.1104(1) would still allow the Department to adjust the bond amount "as standards of reclamation change." The Federal regulations do not have any specific provision requiring additional bonding for extended backfilling and grading times, except for the general bond adjustment clause at 30 CFR 800.30(a). Therefore, we find that this proposed deletion is not inconsistent with the Federal requirements.

At paragraph (4)(intro), Montana proposed to add a new provision incorporating a part of existing 17.24.519A(1)(a), requiring that all final grading be to approximate original contour, that final slopes be graded to prevent slope failure, may not exceed the angle of repose, and must have a static safety factor of 1.3. This is substantively the same as the Federal requirements at 30 CFR 816/817.102(a)(1) and (3).

At subparagraph (4)(a), Montana proposed to delete the requirement to eliminate all spoil piles and depressions. We note that these requirements have been added to the definition of "approximate original contour" at 17.24.301(13) (see Finding C.1. above). Therefore, this proposed deletion does not render the Montana program less effective than the Federal requirements.

At paragraph (6), Montana proposed revised standards for contemporaneous reclamation, that were moved in part from existing 17.24.501A(3). Montana proposed that, for strip mining, there must not be more than four consecutive spoil ridges and backfilling and grading to AOC must be complete within two years after coal removal. For "other excavations" (which presumably would include underground mines), backfilling and grading must be "kept current as departmental directives dictate for each set of field circumstances." It is unclear whether "departmental directives" refers to written policies or to instructions and/or permit conditions assigned ad hoc to each operation. The Montana proposal also provides for case-specific variances from these standards when approved by the

Department based on demonstrations by the operator. The Federal regulations establishing time and distance standards for the evaluation of contemporaneous reclamation at 30 CFR 816.101 have been suspended indefinitely (July 31, 1992; 57 FR 33875). Therefore each regulatory authority may define "as contemporaneously as practicable" for itself in accordance with its State processes. The Federal requirement for contemporaneous reclamation for underground mines at 30 CFR 817.100 also allows regulatory authorities to establish their own schedules. Therefore, we find that Montana's proposals are not inconsistent with the Federal requirements.

At 17.24.501A(1)(a), Montana proposed to delete a statement that the final surface need not have the exact elevations as the premining surface, and a requirement that no slope be steeper than 20 percent without departmental approval. No Federal counterparts exist for these requirements, so their deletion is not inconsistent with the Federal requirements.

At 17.24.501A(1)(b) and (c), Montana proposed to delete requirements for (1) Measuring methods for slopes pre- and post-mining, and (2) an upper limit for postmining slopes based on either the premining slope or lesser slopes specified by the Department. There are no Federal provisions for the measurement of slopes, and no limits on slope steepness beyond those incorporated by Montana at new 17.24.501(4). Therefore, these deletions do not render the Montana program inconsistent with the Federal requirements.

For the reasons discussed above, we approve the revisions proposed for ARM 17.24.501 and .501A.

C.9. ARM 17.24.503 Small Depressions (30 CFR 816/817.102(h))

Montana has proposed revisions to the rule on small depressions to: (1) Add the promotion of wildlife use to the approvable uses for small depressions by the Department of Environmental Quality; (2) delete the phrase that small depressions may not be inappropriate substitutes for construction of lower grades on reclaimed lands; and (3) delete the sentence that small depressions have a holding capacity of less than 1 cubic yard of water.

The Federal regulation at 30 CFR 816/817.102(h) allows the construction of small depressions to enhance wildlife habitat. Therefore, this proposal by Montana addressing wildlife use is no less effective than the Federal counterpart.

The phrase concerning "inappropriate substitutes for the construction of lower grades" comes from the original language in the Federal regulations at 30 CFR 816/817.102(c)(3). This phrase is no longer in the Federal regulations. Therefore, the Montana deletion would make the rules no less effective than the Federal counterpart.

Lastly, the proposed deletion of the size limit would leave it to the Department's discretion to define "small" in various circumstances. The Federal program has no size guidelines for small depressions. We find that the deletion would not be inconsistent with the Federal regulations.

C.10. ARM 17.24.510 Disposal of Offsite-Generated Waste and Fly Ash (30 CFR 816/817.81, 816/817.89)

Montana proposed to revise ARM 17.24.510 to allow waste produced outside the permit area to be used for "other purpose or disposed of on the mine site," in addition to use as fill material, if the permittee can demonstrate that the disposal will be conducted in accordance with sections of the Montana program concerning hydrologic requirements, soil redistribution and stockpiling, the establishment of vegetation, "and any other applicable provisions of the Act and rules." One included requirement is the performance standards at ARM 17.24.505, which governs the disposal of wastes generated on-site. All waste material used on the permit area must receive prior approval by the Department. Montana's explanatory note indicates that wastes might in the future be used for purposes other than fill or disposal (e.g., for road base material or road sanding in winter).

The counterpart Federal regulations for coal mine waste (30 CFR 816.81(b)/817.81(b)) require that coal mine waste material from activities located outside a permit area may be disposed of in the permit area only if approved by the RA. Approval shall be based upon a showing that such disposal will be in accordance with those section's standards concerning coal mine waste disposal. This language is substantively similar to the Montana proposed revision. The Federal requirements for disposal of noncoal wastes (30 CFR 816.89/817.89) do not address off-site generated wastes or the use of wastes for beneficial purposes like those suggested by Montana. Thus, Montana's proposal to regulate these materials according to the performance standards for hydrology, coal waste disposal, soil protection, revegetation, and all other applicable requirements, is not inconsistent with the Federal requirements.