

Since both the Federal regulation and the Montana rule allow for disposal of coal mine waste materials generated off the permitted area when approved by the RA and based a showing that performance standards will be met, we find the Montana revision to be no less effective than the Federal requirements. We approve the proposed rule.

C.11. ARM 17.24.514 Contouring (30 CFR 816.102(j))

Montana proposed to delete ARM 17.24.514 concerning contouring, stating it to be "redundant." ARM 17.24.514 states that final grading and surface preparation, before soil replacement, must be done along the contour to minimize subsequent erosion and instability unless approved otherwise by the RA. Surface preparation must be performed to minimize erosion and provide a surface for the replacement of soil that will minimize slippage.

At ARM 17.24.501(4), (5), and (6) and ARM 17.24.702(4) and (5), Montana addresses all or parts of the requirements to restore lands to approximate original contour; to grade to prevent slope failure, slippage and erosion; and to scarify on the contour. The Federal regulations address these requirements at 30 CFR 816/817.102(a), (j), and (k). Therefore, we agree that ARM 17.24.514 is redundant in the Montana program as it is covered at ARM 17.24.501 and 17.24.702. We approve the proposed deletion as being no less effective than the Federal regulations.

C.12. ARM 17.24.519A and .520 Thick Overburden and Excess Spoil (30 CFR 816.104)

At 17.24.519A, Montana proposed to move the requirements with revisions to 17.24.520. We note that Montana, in an earlier program amendment (MT-003-FOR; Administrative Record Nos. MT-12-01 and MT-12-5; February 1 and 28, 1995), proposed deletions in this rule on which OSM deferred a decision (February 12, 2002; 67 FR 6395, 6400; see Finding L). We must address that deferral before we address the current proposals.

The earlier deletions were (1) the requirement that all highwalls and spoil piles be eliminated with spoil and suitable waste materials; and (2) a variance from that requirement, based on highwall retention and alternate reclamation rules at ARM 26.4.313(3)(b) and 26.4.821-824. We further note that this second provision, *i.e.*, the variance, had been deferred by OSM in a still earlier amendment (MT-001 and MT-002; Administrative Record No. MT-5-

1; December 21, 1988; see final rule dated May 11, 1990; 55 FR 19728, 19730; see Finding 3). Since this variance provision had never been approved by OSM, we have no objection to its deletion. The deletion of the first provision was deferred until it could be established, by the Montana rule making that is the subject of the current program amendment, that the requirement for the elimination of highwalls and depressions existed elsewhere in the revised Montana program. We note that the currently proposed ARM 17.24.501, referencing the currently proposed definition of "approximate original contour," does indeed contain this requirement. Hence, we find the earlier-proposed deletion of this requirement, on which we earlier deferred a decision, to be not inconsistent with the Federal requirements. Since the remainder of 17.24.519A is being moved to 17.24.520, we find that the deletion of 17.24.519A does not substantively alter the Montana program, and we approve it.

At 17.24.520(1) and (2), Montana proposed new provisions taken in part from 17.24.519A. Paragraph (1) defines thick overburden according to a factor of 1.2. At paragraph (2), Montana adds the performance standard that for thick overburden, highwall elimination must be accomplished by backfilling (rather than highwall reduction) before any excess spoil disposal would be allowed. The Federal regulations at 30 CFR 816.104 do not place a numerical value on overburden thickness. Rather, thick overburden is defined more generally as those situations where the postmining (bulked) overburden depth so exceeds the premining depth (*i.e.*, the sum of overburden and coal depth) that backfilling and grading would not achieve AOC. The Federal performance standard for thick overburden is to restore AOC, then use remainder to attain the lowest possible grade, or dispose of it as excess spoil. We find the Montana proposal to be consistent with these requirements, and we approve it.

C.13. ARM 17.24.522 Permanent Cessation of Operations (30 CFR 773.4(a))

OSM advised Montana in an October 17, 1995, issue letter on MT-003-FOR (Administrative Record No. MT-12-16) that the Montana program needed to address situations where a permit is terminated, revoked, or suspended. In this submittal, Montana proposed a revision clarifying that an operator who permanently ceases strip or underground mining operations in all or part of the permit area must permanently reclaim all affected areas regardless of whether the permit has

expired, been revoked, or suspended. Additionally, Montana added an editorial clarification that this provision addresses mining operations not only in all of the permit area, but also when operations cease in only a part of the permit area. Therefore, Montana has made the revisions required by OSM. We find this revision to be no less effective than the Federal regulations and approve the proposed revision.

C.14. ARM 17.24.601 General Requirements for Road and Railroad Loop Construction (30 CFR 816/817.150, 816/817.151, and 816/817.181)

Montana proposed numerous changes to this rule. In several sections, Montana proposed to apply these requirements to railroad loops in addition to roads. Under OSM's rules, railroads are considered "support facilities." Their performance standards at 30 CFR 816/817.181 are similar to, but less specific than, the performance standards for roads. We find that applying road performance standards to railroad loops is not inconsistent with the Federal requirements.

In paragraph (1), Montana proposed to expand the conditions under which roads would be allowed to traverse otherwise reclaimed areas, with justification based on the needs of the operation. OSM's regulations do not address any limitation on road location in regard to any potential delay of other reclamation. Thus, we find that this proposed revision is not inconsistent with the Federal requirements.

At paragraph (2)(a) and (b), Montana proposed to delete some requirements for ramp roads. In OSM's regulations, ramp roads are excluded from the definition of "road" at 30 CFR 701.5, and hence OSM has no requirements for ramp roads. At subparagraph (c), Montana proposed to delete several requirements for specific grades, and to delete former (2)(e) regarding horizontal and vertical alignment of roads. New (2) would require that access and haul roads be graded, constructed, and maintained according to sound engineering and construction practices to incorporate appropriate limits for grade, width, surface material, surface-drainage control, culvert placement, and any other design criteria established by the Department. The Federal provisions at 30 CFR 816.150(c) similarly require that the design and construction of roads incorporate "appropriate" limits for grade, without specific numeric grade limits. For the reasons discussed here, we find the proposed revisions at paragraph (2) to be consistent with the OSM regulations.