

Montana proposed at paragraph (6) to delete the last sentence regarding the applicability of State and Federal legal limitations on runoff from roads and railroad loops. As Montana notes, this provision is redundant with ARM 17.24.633(4).

At paragraph (9), Montana proposed to add a requirement for Departmental approval of dust-control methods. The Federal requirements at 30 CFR 816.150(b)(1) only require compliance with current prudent engineering practice. We find Montana's proposal to be consistent with the OSM requirement.

At paragraph (10), Montana proposed to delete some specific road reclamation requirements and state that roads must be reclaimed in accordance with the approved plan (under ARM 17.24.321(1)(g), the road reclamation plan must be in accordance with the standards of subchapters 5 through 8). Montana's narrative explained that the intent was to simplify the language while retaining the meaning. Proposed for deletion was the phrase "graded to approximate original contour and ripped, subsoiled or otherwise tilled." We note that under ARM 17.24.501(4), all affected lands are required to be regraded to approximate original contour, and ARM 17.24.702(4)(b) requires that all regraded areas must be scarified to a minimum of 12," and the operator must also achieve revegetation success (which may require deeper ripping). Also proposed for deletion was a sentence requiring reclaimed roads to be resoiled, conditioned, and seeded in accordance with subchapter 7 and a sentence indicating reclaimed roads must be abandoned in accordance with the Act and its rules. We note that subchapter 7, the Act, and the Act's rules are applicable with or without this language. Also proposed for deletion was a list of suggested measures to control erosion on reclaimed roads. The requirement to control erosion remains. We note that the suggested list is directory, not mandatory. Based on the above discussion, we find that the proposed revisions to paragraph (10) only eliminate redundant language and do not change any fundamental requirements.

For these reasons, we approve the revisions proposed for ARM 17.24.601.

C.15. ARM 17.24.603 Road and Railroad Loop Embankments (30 CFR 816/817.150, 816/817.151, and 816/817.181)

Montana proposed numerous changes to this rule. Previously, this rule also applied to embankments that impound water. In several sections, Montana

proposed to delete requirements for such embankments, adding a new statement at proposed paragraph (5) that embankments which impound water must be designed and constructed in accordance with ARM 17.24.639. We agree with moving the requirements for water-impounding embankments to ARM 17.24.639. They will be discussed in a separate finding below.

In the introductory paragraph, Montana proposed to delete language requiring that road/railroad embankments be designed and certified by a registered professional engineer. We note that this requirement still exists at ARM 17.24.321(3).

At previous paragraphs p(1)–(8) and (10)–(12), Montana proposed to delete numerous specific design, construction, and performance standards. Following the deletions, the remaining standards would be: at (1), removal of all organic material from embankment foundations; at (2), embankment material must meet some suitability standards; at (3), embankment layers must be compacted as necessary; and at (4), minimum seismic safety factor of 1.2 and static safety factor of 1.5 must be met.

OSM requirements for road embankments at 30 CFR 816/817.151(b) apply only to primary roads, and provide that each primary road embankment shall have a minimum static factor of 1.3 (or meet the requirements established under Sec. 780.37(c), which allow for regulatory authorities to establish design standards in lieu of the static safety factor). The Federal regulations for support facilities (which includes railroads) at 30 CFR 780.38/784.30 and 816/817.181 have no embankment or stability requirements. Therefore, we find that the proposed deletion of the more specific design, construction, and performance standards is not inconsistent with the Federal requirements.

For the reasons discussed above, we approve the proposed revisions to ARM 17.24.603.

C.16. ARM 17.24.604 Soil Removal (From Road Areas) (30 CFR 816/817.22, 816/817.150, 816/817.151, and 816/817.181)

Montana proposed to delete this rule, which required removal of soil before road or railroad construction, including a distance of 10 feet (or other distance approved by the regulatory authority) from the edge of the road, and to prevent contamination or degradation of soil. In its explanatory note, Montana indicates that all of these requirements are duplicated at ARM 17.24.701, except the 10 feet distance. They note that the

10 feet distance is arbitrary and impractical.

OSM's rules regarding roads and support facilities at 30 CFR 816/817.150, 816/817.151, and 816/817.181 do not address soil handling for roads; instead, soil handling requirements for all mining operations, including roads, are addressed in 30 CFR 816/817.22. There is no requirement for soil removal beyond the edges of roads or railroads. We find that Montana's proposed deletion of ARM 17.24.604 is not inconsistent with the Federal requirements, and we approve the deletion.

C.17. ARM 17.24.605 Hydrologic Impact of Roads and Railroad Loops (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.

At paragraph (1), Montana proposed to delete the requirement that contributions of sediment not exceed the limits of State or Federal law. As Montana noted in its explanation, this requirement also exists at ARM 17.24.633(4). Therefore, the deletion of this language does not eliminate the requirement.

At paragraph (2), Montana proposed to delete some detailed requirements for locations of road drainage ditches, particularly with regard to cut and fill slopes. Similar language existed in OSM's initial permanent program rules at then-existing 30 CFR 816.153(b)(1), but was subsequently deleted. Currently, at 30 CFR 816/817.151(d)(3), there are no corresponding requirements for road ditches. Montana also proposed to delete the last sentence of paragraph (2), which addressed ditch slope. As Montana notes, this is redundant with paragraph (3) (intro), which requires all roads to be adequately drained. Therefore, we find that these proposed deletions are not inconsistent with Federal requirements.

At paragraph (3), Montana proposed to exclude ramp roads from road drainage control requirements. As noted above, 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