

Policy Act on March 31, 1995 (60 FR 16722). We find that they are no less effective than the corresponding Federal regulations. Except as discussed above regarding ARM 17.24.911(7)(d), and for the reasons discussed above, we approve the revisions proposed for these two sections.

C.30. ARM 17.24.932(5)(b)  
Underground Mining, Disposal of  
Underground Development Waste:  
Durable Rock Fill (30 CFR 816/817.73)

Montana proposed only a minor editorial revision to this rule, to revise a cross-reference to 17.24.924(18)(b). This cross-reference was created during an earlier program amendment (MT-003-FOR; Administrative Record Nos. MT-12-01 and MT-12-5; February 1 and 28, 1995). In the final rule addressing that amendment, OSM deferred on whether to approve the cross-reference, stating that the cross-reference should be to all of rule 17.24.924 and not to just one paragraph or subparagraph (*see* February 12, 2002; 67 FR 6395, 6404; *see* Finding Y). In this submittal, Montana has revised the cross-reference to reflect a recodification of 17.24.924, but has not revised the cross-reference in a way to resolve the problems identified earlier by OSM. For the reasons stated in the February 12, 2002 rule, we continue to defer a decision on this revision.

C.31. ARM 17.24.1001(2)(l)  
Prospecting, Permit Requirements; ARM  
17.24.1018(3), (4) Prospecting, Notice  
of Intent (30 CFR 772.12(b)(11), (13), (c),  
772.11)

Montana proposed to add at ARM 17.24.1001(2)(l) a new requirement that applications for prospecting permits include documentation that the owners of the land to be affected have been notified and understand that the Department has a right of entry for inspection and enforcement purposes.

There is no exact Federal counterpart to this proposed requirement. The Federal regulations noted above require that exploration permit applications contain the names and addresses of owners of both surface and mineral estates in the areas to be affected and, if the applicant does not own the land, a description of the legal basis for the right to explore. Additionally, as is true of the Montana program, a public newspaper advertisement of the application is required. The Montana proposal is similar to these Federal requirements, but would require more exacting and documented notification of land owners. One of the purposes of SMCRA is to assure that the rights of surface landowners and others with a

legal interest are fully protected (SMCRA 102(b)). We find the Montana proposal to be consistent with this goal, and we approve the proposal.

Similarly, Montana proposed to add at ARM 17.24.1018(3) and (4) new requirements that prospecting notices of intent include (1) Copies of documents providing legal right to prospect, and (2) documentation of notice to landowners similar to that discussed above. Again, there are no exact Federal counterparts at 30 CFR 772.11. However, for the reasons discussed above in regard to ARM 17.24.1001(2)(l), we approve the proposal.

C.32. ARM 17.24.1112 Bonding,  
Release Applications and Objections (30  
CFR 800.40(f))

At ARM 17.24.1112(h), Montana proposed to specify that "any affected person" may submit written comments, objections, and requests for public hearing or informal conference to the Department of Environmental Quality concerning the filing for bond release by the permittee. This information would be included in an advertisement in a newspaper of general circulation in the locality of the permit area.

The Federal regulations at 30 CFR 800.40(f) state that "Any person with a valid legal interest which might be adversely affected by release of the bond, or responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the regulatory authority \* \* \*."

Montana's use of the term, "any affected person," would include persons with a valid legal interest and those without a valid legal interest but affected in some other way. This interpretation is similar to the Federal regulations which address both those persons with a valid legal interest which might be adversely affected by release of the bond, and the responsible officer or head of agencies which have jurisdiction by law or special expertise with respect to environmental, social, or economic impact involved in the operations. Therefore, Montana has included in its rules a term with a substantively identical interpretation to the Federal regulations. We find the Montana revision to be no less effective than the Federal regulations and approve it.

C.33. MCA 82-4-205(2) and 206  
Administration by Department and  
Procedure for Contested Case Hearings  
(SMCRA 201(c), 514(c), 525)

Montana proposed to delete an existing provision at subparagraph MCA 82-4-205(10) that stated the Department may conduct hearings under "this part" (*i.e.*, title 82. Minerals, Oil, And Gas; chapter 4. Reclamation; part 2. Coal and Uranium Mine Reclamation). Montana proposed to add a new paragraph (2) to provide that the board (*i.e.*, the Board of Environmental Quality) shall conduct contested hearings under the part. The effect of these revisions would be to transfer the authority to conduct contested case hearings from the Department to its overseeing board. Montana also proposed a new provision at MCA 82-4-206(1) stating that a person aggrieved by a final decision of the Department may within 30 days request a hearing before the board.

SMCRA is silent on the issue of which body should conduct contested case hearings. A provision addressing permit disputes at SMCRA 514(c) forbids anyone who presided at an informal conference from presiding at a formal hearing. SMCRA 525 establishes administrative review by the Secretary of the Interior, although under SMCRA 701(22), the Secretary is also the regulatory authority (RA). SMCRA 201(c) states that the Secretary, acting through OSM, shall be responsible for both program decisions and administrative review. In practice, however, administrative review under Federal programs is conducted by a panel answerable to the Secretary but independent from OSM. The Federal regulations at 30 CFR 732.15(b)(14) require that State programs provide for administrative review in accordance with SMCRA 525 and 30 CFR parts 840-847 (which implies the panel noted above). The 30-day period proposed by Montana is consistent with the time frames set forth in the Federal requirements. We find these Montana proposals to be consistent with the Federal requirements and we approve them.

C.34. MCA 82-4-231(8) Action on  
Reclamation Plan (SMCRA 503(a)(6),  
510)

Montana proposed several revisions to this statutory section to alter the timing of mining permit application review in coordination with reviews under the Montana Environmental Policy Act. The revisions do not amend any substantive requirements for reviewing mining permit applications.