amendment from the SHPO and ACHP (Administrative Record No. MT–11–03). Neither SHPO and ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, Montana's proposed amendment as submitted on June 16 and July 28, 1993, and as supplemented with additional explanatory information on July 28, 1994.

The Director does not approve, as discussed in Finding No. 5.c., the word ''reasonable'' in the last sentence of proposed MCA 82–4–226(8), concerning the right of entry to inspect prospecting operations under notices of intent.

The Director approves, as discussed in: Finding No. 1, proposed MCA 82–4–203 (14), (16), (21), (23), (29), (34), (35), and (36), concerning definitions; proposed MCA 82–4–226 (2), (3), (5), and (6), concerning coal exploration (''prospecting'') permits and notices of intent; proposed MCA 82–4–227 (1), (2), (3), (7), (8), and (9), concerning permit approval/denial; Finding No. 3, proposed deletion of MCA 82–4–224, concerning surface owner consent; Finding No. 4, proposed MCA 82–4–226(1), concerning the requirement to obtain prospecting permits; Finding Nos. 6 and 7, proposed MCA 82–4–227 (11) and (12), concerning refusal of permitting actions for current violations or patterns of violations; and Finding No. 8, proposed MCA 82–4–227(13) concerning refusal of permit on lands designated as unsuitable for mining.

With the requirement that Montana further revise its program, the Director approves, as discussed in: Finding No. 2, proposed MCA 82–4–227(10) concerning permit issuance requirements for coal conservation plan, with the requirement that Montana further revise the provision to clarify that the coal conservation plan must affirmatively demonstrate that failure to conserve coal will be prevented; Finding No. 5.a., proposed MCA 82–4–226 (1) and (8) (first and second sentence) concerning prospecting under notices of intent, with the proviso that Montana may not implement these provisions until Montana promulgates and OSM approves State implementing regulations that in conjunction with these provisions are less stringent than SMCRA Section 512 and no less effective in implementing SMCRA Section 512 that the Federal regulations at 30 CFR Part 772, and with the requirement that Montana further revise its program to prohibit prospecting under notices of intent when more than 250 tons of coal are to be removed; Finding No. 5.b., proposed MCA 82–4–226(8) (third sentence) concerning performance standard compliance requirements for prospecting under notices of intent, with the proviso that Montana may not implement these provisions until Montana promulgates and OSM approves State implementing regulations that in conjunction with these provisions are no less stringent than SMCRA Section 512 and no less effective in implementing SMCRA Section 512 than the Federal regulations at 30 CFR Part 772 and 30 CFR 701.5; and Finding No. 5.c., proposed MCA 82–4–225 (1) and (8) (fourth [last] sentence) concerning right of entry to inspect prospecting operations under notices of intent, with the requirement that Montana further revise the provision to delete the word ''reasonable,'' additionally revise its program to provide authority for the inspection of monitoring equipment and prospecting methods for prospecting conducted under notices of intent, and access to and copying of any records required by the Montana program, at any reasonable time without advance notice upon presentation of appropriate credentials, and additionally revise its program to provide for warrantless right of entry in accordance with 30 CFR 840.12 for prospecting operations conducted under notices of intent.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 926.16 that, within 60 days of the publication of this final rule, Montana must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Montana's established administrative or legislative procedures.

The Federal regulations at 30 CFR Part 926, codifying decisions concerning the Montana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Montana program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Montana of only such provisions.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 723.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).