



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

**SATS No. MT-036-FOR; Docket ID: OSM-2017-0001;
S1D1S SS08011000 SX064A000 189S180110;
S2D2S SS08011000 SX064A000 18XS501520**

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Montana regulatory program (Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposes an addition to the Montana Code Annotated, which requires the adoption of regulations pertaining to in situ coal gasification. This change was necessitated by a senate bill approved by the 2011 Montana

Legislature. Montana also proposes revisions and additions to the Administrative Rules of Montana to satisfy the new statutory requirement.

This document provides the times and locations that the Montana program and this proposed amendment to Montana's program are available for your inspection; the comment period during which you may submit written comments on the amendment; and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., m.d.t., [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., m.d.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket Number OSM-2017-0001, by any of the following methods:

- Mail/Hand Delivery: 1999 Broadway, Suite 3320, Denver, CO 80202
- Fax: (303) 293-5017
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you may go to the address listed below during normal business hours, Monday through Friday, excluding holidays. The full text of the program amendment is also available for you to read at www.regulations.gov. You may receive one free copy of the amendment by contacting OSMRE’s Denver Field Division:

Jeffrey Fleischman, Chief, Denver Field Division

Office of Surface Mining Reclamation and Enforcement

Dick Cheney Federal Building

POB 11018, 150 East B Street, Casper, Wyoming 82601-7032

Telephone: (307) 261-6550

E-mail: jfleischman@osmre.gov

In addition, you may receive a copy of the proposed amendment from the Montana Department of Environmental Quality:

Edward L. Coleman, Chief, Coal and Opencut Mining Bureau

Montana Department of Environmental Quality

P.O. Box 200901, Helena, Montana, 59620-0901

Telephone: (406) 444-4973

E-mail: ecoleman@mt.gov

FOR FURTHER INFORMATION CONTACT:

Howard Strand

Office of Surface Mining Reclamation and Enforcement

1999 Broadway, Suite 3320

Denver, CO 80202

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E-mail: hstrand@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, state laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, Federal Register (45 FR 21560). You can also find later actions concerning the Montana program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated February 27, 2017 (FDMS Document ID No. OSM-2017-0001-0002), Montana sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed changes are the result of a Montana state senate bill which required adoption of regulations pertaining to in situ coal gasification.

Specifically, Montana proposes to codify language from Senate Bill 292 under the

Montana Strip and Underground Mine Reclamation Act. This language, approved by the 2011 Montana Legislature, directs the Montana Board of Environmental Review (BER) to adopt rules pertaining to in situ coal processing and provides that those rules may not be more stringent than the comparable federal regulations or guidelines. The Administrative Rules of Montana (ARMs) currently have two regulatory provisions, ARM 17.24.902 and ARM 17.24.904, that specifically address in situ coal gasification and that list subchapters of the ARMs that apply to in situ coal gasification. Following passage of Senate Bill 292, the Montana Department of Environmental Quality reviewed Montana's rules and determined that most of the rules relating to underground coal mining should apply to in situ operations. It recommended that, rather than adopting rules that would duplicate existing rules, BER should simply list the rules that would not apply to in situ operations. To reflect this approach, Montana now proposes adding a new ARM 17.24.905, which specifies that the ARMs pertaining to air pollution control plans, monitoring for settlement of regraded areas, augering and remining do not apply to in situ coal gasification. Montana also proposes ministerial changes to ARM 17.24.902 and ARM 17.24.903 that reflect these exemptions. Finally, Montana proposes to allow the regulatory authority to apply other rules, which are not routinely applied to all in situ operations, on a mine-specific basis.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent state or federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment

including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

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

Other Laws and Executive Orders Affecting Rulemaking

When a state submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved,

approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, surface mining, underground mining.

Dated: April 18, 2018.

David Berry, Regional Director

Western Region

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