



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT-043-FOR; Docket ID: OSM-2023-0008
S1D1S SS08011000 SX064A000 231S180110;
S2D2S SS08011000 SX064A000 23XS501520]

Montana Regulatory Program

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

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are reopening the public comment period due to a request for an extension of the public comment period to a proposed amendment to the Montana regulatory program (hereinafter, the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). During the 2023 legislative session, the Montana legislature passed Senate Bill 392 (SB 392), amending the Montana Strip and Underground Mine Reclamation Act (MSUMRA) as well as the Montana Code Annotated (MCA). Accordingly, Montana submitted this proposed amendment to OSMRE on its own initiative.

This document gives the times and locations that the Montana program and this

proposed amendment to the 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, until November 6, 2023.

ADDRESSES: You may submit comments, identified by SATS No. MT-043-FOR, by any of the following methods:

- *Mail/Hand Delivery:* OSMRE, Attn: Jeffrey Fleischman, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82602
- *Fax:* (307) 261-6552
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM-2023-0007. If you would like to submit comments, go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

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

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 or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Casper Field Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Attn: Jeffrey Fleischman, Field Office Director
Office of Surface Mining Reclamation and Enforcement
100 East B Street, Casper, Wyoming 82602
Telephone: (307) 261-6550
Email: jfleischman@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

Attn: Dan Walsh, Mining Bureau Chief
Coal and Opencut Mining Bureau
Department of Environmental Quality,
P.O. Box 200901
Helena, MT 59601-0901
Telephone: (406) 444-6791
Email: dwalsh@mt.gov

FOR FURTHER INFORMATION CONTACT:

Attn: Jeffrey Fleischman, Field Office Director

Office of Surface Mining Reclamation and Enforcement

100 East B Street, Casper, Wyoming 82602

Telephone: (307) 261-6550

Email: jfleischman@osmre.gov

SUPPLEMENTARY INFORMATION:

On August 7, 2023 (88 FR 52086) we published a proposed rule announcing receipt of a program amendment from Montana. Under section 1 of SB 392 Montana proposes to add a provision to MCA, section 1, for the equal application of court costs to the prevailing party in contested case proceedings by a court or administrative agency that issues a decision pursuant to §82-4-2. This proposed section allows that a court or administrative agency may award the prevailing party reasonable costs of litigation, including filing fees, attorney fees, and witness costs. Under this proposal a court or administrative agency may not consider the identity of the party when awarding costs. The proposal applies equally to all parties in an action and places the burden of proof and persuasion for awarding court costs on the requesting party. SB 392 does not state where section 1 will be codified in the MCA. This will be done by the legislature later; however, section 1 will be an integral part of the MCA.

The proposal amends §82-4-251(7) and §82-4-252(5) to reference the equal application of court costs in section 1. §82-4-251(7), which discusses the awarding of court costs.

Lastly, SB 392 adds four contingencies to section 1 and the proposed amendments to §82-4-251 and §82-4-252. The contingencies will not be codified into the MCA but apply to section 1 as proposed and the amended sections of the MCA. Section 4 of SB 392 contains codification instructions which state that [section 1] is intended to be codified as an integral part of §82-4-2 and the provisions of §82-4-2 apply to [section 1].

Section 5 is a severability clause and states that if a part of SB 392 is found to be invalid, any part(s) found valid will remain in effect. Section 6 of SB 392 is an effective date, which states that the act is effective on passage and approval. Lastly, section 7 of SB 392 is an applicability clause, which states that SB 392 applies to court actions filed on or after the effective date of SB 392.

By letter dated August 18, 2023 (FDMS Document ID No. OSM-2023-0008-0008), multiple conservation groups sent us a letter requesting an extension of the public comment period. The conservation groups cited the controversial nature of the amendment, technical difficulties accessing the comment page, and scheduling difficulties around a Public Holiday, as reasons why OSMRE should grant an extension on the comment period. OSMRE reviewed the request for an extension of the public comment period and agree that the controversial nature of the amendment affords the public more time to submit the fullest and most comprehensive comments possible. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

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 State 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.

List of Subjects in 30 CFR part 926

State regulatory program approval, state-federal cooperative agreement, required program amendments.

David A. Berry
Regional Director, Unified Regions 5, 7-11
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