

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 926**

[SATS No: MT-030-FOR; Docket ID: OSM-2009-0007]

**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 are announcing receipt of 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"). Montana proposes revisions to the statute, the Montana Code Annotated (MCA), about determination of revegetation success and final bond release. Montana intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Montana program and proposed amendment to that 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 p.m., m.d.t. September 11, 2009. If requested, we will hold a public hearing on the amendment on September 8, 2009. We will accept requests to speak until 4 p.m., m.d.t. on August 27, 2009.

**ADDRESSES:** You may submit comments by either of the following two methods: *Federal eRulemaking Portal:* <http://www.regulations.gov>. This proposed rule has been assigned Docket ID: OSM-2009-0007. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and do the following. Click on the "Advanced Docket Search" button on the right side of the screen. Type in the Docket ID "OSM-2009-0007" and click the "Submit" button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM-2009-0007, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

• *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining

Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018, Casper, Wyoming 82601-1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at <http://www.regulations.gov>, you may review copies of the Montana program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Casper, Wyoming 82601-1018, 307/261-06547, [JFleischman@osmre.gov](mailto:JFleischman@osmre.gov).

Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 406/444-4972, [neharrington@mt.gov](mailto:neharrington@mt.gov).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, *Telephone:* 307/261-6547. *Internet:* [jfleischman@osmre.gov](mailto:jfleischman@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 State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." 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 Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

**II. Description of the Proposed Amendment**

By letter dated May 12, 2009, Montana sent us a proposed amendment to its program [Administrative Record Docket ID No. OSM-2009-0007 under SMCRA (30 U.S.C. 1201 *et seq.*)] to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under

**ADDRESSES.**

Specifically, Montana proposes changes to MCA 82-4-235(2), (3), and (4), Determination of successful revegetation—final bond release. The proposed change to subsection (2) would add a reference to proposed new subsection (3). Proposed new subsection (3) is modeled after a similar provision in North Dakota's Policy Memorandum No. 20 to Mine Operators, dated January 29, 2009 (Revised). This new provision would exempt selected disturbances from the minimum 10-year revegetation liability period. Exempted disturbances could include sedimentation ponds, topsoil stockpiles, roads, and other water management or support facilities areas up to a maximum of 10% of any area for which bond release is sought.

Former subsection (3) would be recodified as subsection (4). Additional changes proposed to this subsection include adding a reference to new subsection (3) and editorial changes resulting from those changes proposed above.

**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 comments, 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 Tribal 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 above (*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 in the electronic docket for this rulemaking at <http://www.regulations.gov>. 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 p.m., m.d.t. on August 27, 2009. 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 the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a 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.

#### **IV. Procedural Determinations**

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

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

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 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 because each 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, 732.15, 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.

##### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.

The rule does not involve or affect Indian Tribes in any way.

##### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement because 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. 4321 *et seq.*).

##### *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. 3501 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### *Unfunded Mandates*

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### **List of Subjects in 30 CFR Part 926**

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 10, 2009.

**Allen D. Klein,**

*Regional Director, Western Region.*

[FR Doc. E9-19362 Filed 8-11-09; 8:45 am]

**BILLING CODE 4310-05-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 271**

[EPA-R08-RCRA-2009-0341; FRL-8940-9]

#### **Colorado: Final Authorization of State Hazardous Waste Management Program Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The state of Colorado has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to the hazardous waste program changes submitted by the state of Colorado. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes in an

immediate final rule. EPA did not propose the rule prior to issuing the immediate final rule because the Agency believes this action is not controversial and does not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments that oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and EPA will not take further action on this proposal. If the Agency receives comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will then address public comments in a later final rule based on this proposal. Any parties interested in commenting on this action must do so at this time. EPA may not provide further opportunity for comment.

**DATES:** Comments must be received on or before September 11, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-RCRA-2009-0341, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail:* [cosentini.christina@epa.gov](mailto:cosentini.christina@epa.gov).

- *Fax:* (303) 312-6341.

- *Mail:* Send written comments to Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P-HW, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery or Courier:* Deliver your comments to Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P-HW, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Deliveries are accepted only during the Regional Office's normal hours of operation, 7 a.m. to 5 p.m. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-RCRA-2009-0341. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The federal Web site <http://www.regulations.gov> is an "anonymous

access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you e-mail your comment directly to EPA rather than going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy from 9 a.m. to 4 a.m. at: EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, contact: Christina Cosentini, phone number (303) 312-6231, or the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222-1530, contact: Randy Perila, phone number (303) 692-3364.

#### **FOR FURTHER INFORMATION CONTACT:**

Christina Cosentini, (303) 312-6231, [cosentini.christina@epa.gov](mailto:cosentini.christina@epa.gov) or Randy Perila, (303) 692-3364, [randy.perila@state.co.us](mailto:randy.perila@state.co.us).

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 14, 2009.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

[FR Doc. E9-19317 Filed 8-11-09; 8:45 am]

**BILLING CODE 6560-50-P**