



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 926

[SATS No. MT-039-FOR; Docket ID: OSM-2020-0004;  
S1D1S SS08011000 SX064A000 212S180110;  
S2D2S SS08011000 SX064A000 21XS501520]

#### Montana AML Plan

**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 Abandoned Mine Land Reclamation Plan (Montana Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The State submitted this proposal in response to OSMRE's request to update the Montana Plan. Montana also seeks to make changes that will improve the Plan's readability and operational efficiency. This document gives the times and locations that the Montana Plan and this proposed amendment to that Plan 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 SATS No. MT-039-FOR, by any of the following methods:

- Mail/Hand Delivery: OSMRE, Attn: Jeffrey Fleischman, P.O. Box 11018, Dick Cheney Federal Building, 100 East B Street, Casper, WY 82601-7032
- Fax: (307) 261-6552
- 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 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](http://www.regulations.gov).

Attn: Jeffrey Fleischman, Division Manager

Office of Surface Mining Reclamation and Enforcement

OSMRE, Dick Cheney Federal Building, 150 East B Street, Casper, WY 82601-7032

Telephone: 307-261-6550

E-mail: JFleischman@osmre.gov

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

Montana Department of Environmental Quality,

1225 Cedar Street

Helena, MT 59601

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, 150 East B Street, Casper, WY 82601-7032

Telephone: (307) 261-6550

E-mail: JFleischman@osmre.gov

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Montana Plan
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Statutory and Executive Order Reviews

**I. Background on the Montana Plan**

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance

the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines.

On October 24, 1980, the Secretary of the Interior approved the Montana Plan. You can find general background information on the Montana Plan, including the Secretary's findings and the disposition of comments, in the October 24, 1980, **Federal Register** (45 FR 70445). OSMRE announced in the July 9, 1990, **Federal Register** (55 FR 28022), the Director's decision accepting certification by Montana that it had addressed all known coal-related impacts in the State that were eligible for funding under the Montana Plan. You can also find later actions concerning Montana's Plan and Plan amendments at 30 CFR 926.25.

## **II. Description of the Proposed Amendment**

In a letter dated March 6, 2019 (Document ID No. OSM-2020-0004-0003), OSMRE, under the authority of 30 CFR 884.15, directed the State to update the Montana Plan. OSMRE requested that Montana update its Plan to meet the requirements of SMCRA, as revised on December 20, 2006 as part of the Tax Relief and Health Care Act of 2006 (Public Law 109-432), and in response to changes made to the implementing federal regulations as revised on November 14, 2008 (73 FR 67576) and February 5, 2015 (80 FR 6435). By letter dated August 4, 2020 (Administrative Record No. OSM-2020-0004-0002), Montana sent us an amendment to its State Plan under SMCRA (30 U.S.C. 1201 *et seq.*). This amendment is intended to address the required amendments identified in OSMRE's letter dated March 6, 2019. The State has also proposed additional changes as part of the State's initiative to improve the Plan's readability and

operational efficiency. This amendment will essentially repeal and replace Montana's existing AML Plan. A summary of the proposed changes is provided below.

Through this amendment, Montana proposes to include an updated legal opinion from the State indicating the Department of Environmental Quality (DEQ) has legal authority to conduct the AML Program under SMCRA as required under 30 CFR 884.13(a)(2). The State also proposes to omit historical documents regarding approval of previous changes to the Montana Plan; reference statutory sections rather than incorporating statutory language; reference rather than incorporating other relevant State laws such as personnel and procurement policies; clarify how AML hazards are classified into priority ranks and selected for funding; indicate how coal versus non-coal projects will be selected; clarify the Authorization to Proceed process prior to beginning reclamation projects; clarify historic set-aside fund and acid mine drainage treatment accounts, remove the Emergency Program section; and make general editorial changes for brevity and structural alignment with the Federal AML Plan requirements under 30 CFR 884.13. Montana's amendment submittal package also proposes a change to statutory language at MCA 82-4-1006 enacted by the State Legislature in 2007 regarding establishment, management, and use of funds in the State's Abandoned Mine Reclamation Account.

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](http://www.regulations.gov).

### **III. Public Comment Procedures**

We are seeking your comments on whether the amendment satisfies the applicable plan approval criteria of 30 CFR 884.14 and 884.15. If we approve the amendment, it will become part of the state Plan.

### *Electric 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 Plan, 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 Plan 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 and Executive Order 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program and is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

### *Other Laws and Executive Orders Affecting Rulemaking*

When a state submits a Plan amendment to OSMRE for review, our regulations at 30 CFR 884.14 and 884.15, and agency policy require public notification and an opportunity for public comment. We accomplish this by publishing a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms. 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**

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

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David A. Berry, Regional Director

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