



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 926

[SATS No. MT-042-FOR; Docket ID: OSM-2023-0007; S1D1S SS08011000

SX064A000 222S180110; S2D2S SS08011000 SX064A000 22XS501520]

#### Montana Regulatory Program

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

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

**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). Montana proposed this amendment to OSMRE, on its own initiative, following its passing of Montana House Bill 576 (2023), which amends the Montana Code Annotated and proposes changes to the definition of material damage and changes to permit requirements related to hydrologic information. HB 576 also adds four contingencies to the proposed amendments of the MCA: a severability clause, a contingent voidness clause, an effective date clause, and a retroactive applicability clause. This document gives the times and locations that the Montana program and this revised proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the revised 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., Mountain Daylight Time (MDT), November 6, 2023.

**ADDRESSES:** You may submit comments, identified by SATS No. MT-042-FOR, by any of the following methods:

- Mail/Hand Delivery: 100 East B Street, Room 4100, Casper, WY 82601
- Fax: (307) 421-6552
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM-2023-0007. If you would like to submit comments go to <https://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 Denver Field Division or the full text of the program amendment is available for you to read at [www.regulations.gov](http://www.regulations.gov).

Jeffrey Fleischman, Chief, Denver Field Division

Office of Surface Mining Reclamation and Enforcement

Dick Cheney Federal Building

POB 11018, 100 East B Street, Casper, Wyoming 82601

Telephone: (307) 261-6550

E-mail: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov)

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

Dan Walsh, Chief, Coal and Opencut Mining Bureau

Montana Department of Environmental Quality

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

Telephone: (406) 444-6791

E-mail: [dwalsh@mt.gov](mailto:dwalsh@mt.gov)

**FOR FURTHER INFORMATION CONTACT:**

Howard Strand

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One Denver Federal Center, Building 41

Lakewood, CO 80225-0065

Telephone: (303) 236-2931

E-mail: [hstrand@osmre.gov](mailto:hstrand@osmre.gov)

**SUPPLEMENTARY INFORMATION:**

On August 7, 2023 (88 FR 52084) we published a proposed rule announcing receipt of a program amendment from Montana. Montana submitted this proposed amendment to us, of its own volition, following the passage of Montana House Bill 576 (HB 756) during the 2023 legislative session. HB 576 amends the Montana Strip and Underground Mine Reclamation Act as well as section 82-4-203 and section 82-4-222 of MCA. HB 576 also adds four contingencies that apply to the proposed amendments. First, Montana proposes several changes to section 82-4-203(32), which defines and describes “Material Damage.” Next, Montana proposes to amend its coal mine operation permit requirements related to hydrologic information section 82-4-222(1)(m). Lastly,

HB 576 adds four contingencies to the proposed amendments of section 82-4-203(32) and section 82-4-222(1)(m) that are not codified into the MCA but apply to the amended sections: a severability clause, a contingent voidness clause, an effective date clause, and a retroactive applicability clause.

By letter dated August 18, 2023 (FDMS Document ID No. OSM-2023-0007-0008), 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 portal, and scheduling difficulties around a public holiday, as to 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 15-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-federal cooperative agreement, State regulatory program approval,  
Required program amendments.

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

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