



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 926

[SATS No. MT-044-FOR; Docket ID: OSM-2023-0009; S1D1S SS08011000

SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520]

#### 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 (hereinafter, the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana submitted this proposed amendment to us, on its own initiative, following the passage of a Montana House Bill during the 2023 legislative session. Montana proposes several changes to the Montana Code Annotated (MCA). Montana adds a new section detailing the procedures a permittee must follow when applying for a “minor revision” to its permit. Montana adds several new definitions and removes the current procedures for a permit revision application. Furthermore, Montana adds clarifying language regarding “minor revisions” of permits. Lastly, Montana adds contingencies that will not be codified into law but that will apply to the proposed amendment: “Codification Instructions” and “Contingent Termination.” This document gives the times and locations that the Montana program and this 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., Mountain Daylight Time (M.D.T.) [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If requested, we may hold a public hearing or meeting 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 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-042-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-2023-0009. 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 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, 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](mailto: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](mailto: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](mailto:jfleischman@osmre.gov)

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- 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**

Subject to OSMRE’s oversight, 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 approved, State 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 approved the Montana program on October 24, 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 October 24, 1980, **Federal Register** (45 FR 70445). You can also find later actions concerning the Montana program and program amendments at 30 CFR 926.25.

**II. Description of the Proposed Amendment**

By letter dated July 13, 2023 (Administrative Record No. MT-044-01), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). We found Montana’s proposed amendment to be administratively complete on July 14, 2023.

Montana submitted this proposed amendment to us, on its own initiative, following the passage of Montana House Bill 656 (HB 656) during the 2023 legislative session.

Montana proposes several changes to title 82, chapter 4, part 2 of the MCA. First, Montana proposes to add a new section titled “Minor Revisions – application – exemptions,” which tells a permittee what must be included in minor permit revision applications and provides a timeline for the Montana Department of Environmental

Quality's (DEQ) review of said applications.

Second, Montana proposes to add four new entries to 82-4-203 MCA – Definitions: (5) Amendment, (28) Incidental Boundary Revision, (33) Major Revision, and (39) Minor Revision. Due to the new definitions, Montana also proposes to update the numbers listed for existing definitions.

Third, Montana proposes to amend 82-4-221 MCA – Mining Permit Required. Here, Montana proposes to remove language that gives direction to a permittee when it files an application to revise its permit. It also removes language that outlines DEQ's timeline for reviewing minor revision applications.

Fourth, Montana proposes to amend 82-4-225 MCA – Application for increase or reduction in permit area amendment. Montana amends the title of this section to be "Application for permit amendment." Montana then removes two occurrences of the phrase "area of land affected," replacing one with "permit area" and the other with "permit boundary." Montana also removes language that allows a permittee to apply to "reduce" its permit area, and removes language that allows an operator to apply, at any time, to increase or reduce its area of land affected. Lastly, Montana adds "minor revisions" to the list of permit revision applications that do not follow the same procedures as original permit applications.

Finally, HB 656 adds two contingencies that affect the amended sections above, but that are not codified into the MCA. Section 5 of HB 656 states that the changes proposed through HB 656 are intended to be codified into title 82, chapter 4, part 2 of the MCA. Section 6 of HB 656 states that HB 656 will terminate if OSMRE disapproves the proposed changes made in the bill. The date of termination would be the date DEQ certifies to the Montana code commissioner that OSMRE disapproved the proposed changes.

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**

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.

#### *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 [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, Executive Order 13563—Improving Regulation and Regulatory Review, and 14094 – Modernizing Regulatory Review*

Executive Order (E.O.) 12866, as amended by E.O. 14094, 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/or AML plan amendments is exempted from OMB review under Executive Order 12866, as amended by E.O. 14094. 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 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**

State regulatory program approval, State-Federal cooperative agreement, Required program amendments.

**David A. Berry,**

*Regional Director, Unified Regions 5, 7-11.*