



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 926

[SATS No. MT-048-FOR; Docket ID: OSM-2025-0008; S1D1S SS08011000

SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

#### 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 Montana House Bill 587 (HB 587) during the 2025 legislative session. Montana proposes several changes to the Montana Code Annotated (MCA), generally related to a new definition of “Material damage” with respect to the hydrologic balance, alluvial valley floors, and subsidence and the option for a permit applicant to provide self-collected information related to its determination of probable hydrologic consequences, if an appropriate Federal or State agency cannot provide such information. This notice also allows for a public comment period and the possibility for a public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4:00 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 4:00 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-048-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-2025-0008. If you would like to submit comments, go to <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 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. The full text of the program amendment is available for you to read at [www.regulations.gov](http://www.regulations.gov). Or you may receive one free copy of the amendment by contacting OSMRE’s Casper Field Office: 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: Eric Dahlgren, Bureau Chief, Mining Bureau, Montana Department of Environmental Quality, 2401 Colonial Drive, Helena, MT 59601-0901, Telephone: (406) 444-5245, Email: [edahlgren@mt.gov](mailto:edahlgren@mt.gov).

**FOR FURTHER INFORMATION CONTACT:**

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:**

- 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 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 the Montana program and program amendments at 30 CFR 926.15.

## II. Description of the Proposed Amendment

By letter dated May 15, 2025 (Administrative Record No. MT-048-01), 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 May 15, 2025.

Montana submitted this proposed amendment to us, on its own initiative, following the passage of Montana House Bill 587 (HB 587) during the 2025 legislative session.

Montana first proposes changes to 82-4-203(35) of the MCA. Montana proposes changes to the definition for "Material damage," by removing the previous definition and creating three sub-definitions. The first, paragraph (a), defines "Material damage . . . with respect to the hydrologic balance outside the permit area," as a quantifiable adverse impact from coal mining and reclamation operation on the quality and quantity of surface or groundwater. The adverse impact must preclude any existing or reasonably foreseeable use of water outside the permit area. It further defines a "quantifiable adverse impact" as an effect that can be quantified and measured to a significant degree of confidence. Lastly, it states that "existing or reasonably foreseeable uses of water" are those beneficial uses recognized in title 75, chapter 5, part 3 of the MCA.

Next, in paragraph (b), Montana defines "Material damage . . . with respect to an alluvial valley floor" as degradation or reduction by coal mining and reclamation to water quality or quantity supplied to the alluvial valley floor that significantly decreases its ability to support agricultural activities.

And in paragraph (c), Montana defines "Material damage . . . with respect to subsidence" as a functional impairment to surface lands, features, structures, or facilities; a physical change that has significant adverse impact on an affected land's ability to support any current or reasonably foreseeable uses or causes significant loss to production or income; or a significant change in the condition, appearance, or utility of a structure or facility.

In addition to the changes to “Material damage,” Montana proposes changes to its permit application requirements in 82-4-222(1)(m). Currently, an operator can receive necessary hydrologic and geologic information from an appropriate Federal or State agency to determine probable hydrologic consequences. Under Montana’s proposal, an operator may use information collected on their own when the necessary information is not available from a Federal or State agency.

Finally, HB 587 adds four contingencies that affect the amended sections above, but that are not codified into the MCA. This includes a “Severability” clause that would allow valid parts to remain effective if other parts are found invalid, a “Contingent Voidness” clause that would void any portion of the act disapproved by the United States Secretary of the Interior, an “Effective Date” clause, which makes HB 587 effective the date in which it is passed and approved, and a “Retroactive Applicability” clause, which applies the changes made through HB 587 to actions or petitions that are pending but not yet decided on or after the 69<sup>th</sup> Montana Legislature 2025. 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 4:00 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 (OMB Memo M-94-3), the approval of State program and/or AML plan amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563 reaffirms and supplements Executive Order 12866.

### *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.

**Marcelo Calle,**  
*Acting Regional Director,*  
*Interior Regions 5, 7-11.*

[FR Doc. 2025-14722 Filed: 8/1/2025 8:45 am; Publication Date: 8/4/2025]