



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT-047-FOR; Docket No. OSM-2025-0007; S1D1S SS08011000

SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

Montana Regulatory Program

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

ACTION: Final rule; approving.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Montana regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana submitted this proposed amendment to OSM on its own initiative in response to a State law passed by the Montana Legislature – House Bill 616 (HB 616). The amendment to the Montana coal program regulations proposed that predictive modeling, along with monitoring data, may be included in a permittee’s bond release application to prove compliance with their approved reclamation plans. Furthermore, Montana proposed that it may retain a portion of a bond for areas that are contributing suspended solids. HB 616 also included contingencies that apply to the proposed amendment but are not codified into the Montana Code Annotated (MCA): a severability clause, a contingent voidness clause, and an effective date clause.

DATES: The effective date is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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:

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I. Background on the Montana Program

Section 503(a) of SMCRA 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 program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in

accordance with SMCRA and are consistent with the Federal implementing regulations. See 30 U.S.C. 1253(a)(1) and (7); 30 CFR 730.5 and 732.15(a). 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. Submission of the Amendment

By letter dated May 6, 2025 (Administrative Record No. MT-047-01), 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 7, 2025.

Montana submitted the proposed amendment to us, on its own volition, after the Montana legislature passed HB 616 during the 2025 legislative session. HB 616 amended the Montana Strip and Underground Mine Reclamation Act (MSUMRA) as well as section 82-4-232 of the MCA.

Montana proposes several changes throughout 82-4-232(6) of the MCA. First, Montana proposes that, in a permittee's application for bond release, the permittee may include other information or methods to demonstrate compliance with its approved reclamation plan, including predictive modeling, if it is used in conjunction with monitoring data. Second, Montana proposes that the Montana Department of Environmental Quality (MDEQ) may use a permittee's predictive modeling in its review and determination of the permittees bond release application. Third, Montana proposes that MDEQ can retain a portion of a permittee's bond if sediment sampling or predictive modeling demonstrates that disturbed areas proposed for release are contributing suspended solids to streams and runoffs.

Lastly, HB 616 added three contingencies to the proposed changes of § 82-4-232 that are not codified into the MCA but apply to the sections amended by the legislation. These provisions cover severability, contingent voidness, and effective date.

We announced receipt of the proposed amendment in the August 4, 2025, edition of the **Federal Register** (90 FR 36402). We received seven written comments on the proposed rule.

III. OSM's Findings

OSM reviewed Montana's submittal according to the requirements of SMCRA and the Federal regulations at 30 CFR 730.5, 732.15, and 732.17. As described below, we are approving Montana's submittal.

A. Montana Code Annotated (MCA) 82-4-232

As discussed in more detail below, Montana's proposed changes to its bond release requirements at MCA 82-4-232, which added an option to use predictive modeling in conjunction with monitoring data to demonstrate and assess compliance with an operation's approved reclamation plan, are in accordance with SMCRA and consistent with the Federal regulations.

1. MCA 82-4-232(6)(a)(i)

Montana's proposed creation and changes to MCA 82-4-232(6)(a)(i) are in accordance with SMCRA and consistent with the Federal regulations. At MCA 82-4-232(6)(a)(i), which contains rules for a permittee submitting a bond release application and a public notice for said bond release application, Montana created a new subsection from the first part of current subsection 6(a) and then added language that allows a permittee to include in its public notice "other information or methods, including predictive modeling, which may be used in conjunction with the monitoring data compiled for the performance bond release application to demonstrate compliance with the approved reclamation plan."

By comparison, the Federal counterpart for public notice at 30 CFR 800.40(a)(2) requires the operator to notify the public of its application for bond release and submit to the regulatory authority a copy of that notice as well as “a description of the results achieved as they relate to the permittee’s approved reclamation plan,” but the Federal regulations and SMCRA at 30 U.S.C. 1269 do not give specific methods for demonstrating compliance.

Montana’s proposed changes will allow an operator to submit predictive modeling, along with the already required monitoring data, with their bond release public notice and application. Montana is adding this requirement in response to its changes in MCA 82-4-232(6)(k)(ii) and (6)(k)(iv)(A), where Montana allows an operator to demonstrate compliance with a reclamation plan through predictive modeling for soil replacement, permanent siltation ponds, and suspended solids. As required by SMCRA and the Federal regulations, an operator must notify the public of its proposed bond release and must submit evidence of reclamation achievement in its bond release application. Through these proposed changes, Montana would require that, if an operator is using data acquired through predictive modeling to demonstrate compliance with an approved reclamation plan to include that modeling, along with monitoring data, in the bond release notice and application. Thus, Montana’s proposed creation and changes to MCA 82-4-232(6)(a)(i) are in accordance with SMCRA and consistent with the Federal regulations.

2. MCA 82-4-232(6)(a)(ii)

Montana’s proposed creation and changes to MCA 82-4-232(6)(a)(ii) are in accordance with SMCRA and consistent with the Federal regulations. At MCA 82-4-232(6)(a)(ii) of the MCA, which contains rules for a permittee submitting a bond release application and a proposed public notice for said bond release application, Montana created a new subsection from the later part of subsection(6)(a), removed the phrase

“In addition, as” and replaced it with the word “As.” These changes are minor changes to the organization of the MCA and have no substantial effect on the rule. Thus, Montana’s proposed creation and changes to MCA 82-4-232(6)(a)(ii) are in accordance with SMCRA and consistent with the Federal regulations.

3. MCA 82-4-232(6)(b)(iv)

Montana’s proposed changes to MCA 82-4-232(6)(b)(iv) are in accordance with SMCRA and consistent with the Federal regulations. At MCA 82-4-232(6)(b)(iv), which contains rules for an operator to submit an administratively complete bond release application, Montana added language that allows a permittee to include “other information or methods, including predictive modeling, which may be used in conjunction with the monitoring data for the purposes of demonstrating compliance with the approved reclamation plan.”

By comparison, the Federal counterpart at 30 CFR 800.40(a)(2) does not specifically mention methods for demonstrating compliance with the approved reclamation plan, just that the application contain “a description of the results achieved as they relate to the permittee’s approved reclamation plan.” And while the relevant portion of SMCRA also does not mention specific methods for demonstrating compliance with the approved reclamation plan, it does require that “[s]uch evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution.” 30 U.S.C. 1269(b).

Montana’s proposed changes will allow an operator to submit predictive modeling, along with the already required monitoring data, with their bond release application. Montana is adding this requirement in response to its changes in MCA 82-4-232(6)(k)(ii) and (6)(k)(iv)(A), where Montana allows an operator to demonstrate

compliance with a reclamation plan through predictive modeling for soil replacement, permanent siltation ponds, and suspended solids. As required by SMCRA and the Federal regulations, an operator must submit evidence of reclamation achievement in its bond release application. With these revisions, Montana is similarly requiring that, if an operator used predictive modeling to demonstrate compliance with an approved reclamation plan, that operator must submit those modeling results, along with monitoring data, in the bond release application. Thus, Montana's proposed changes to MCA 82-4-232(6)(b)(iv) are in accordance with SMCRA and consistent with the Federal regulations.

4. MCA 82-4-232(6)(h)

Montana's proposed changes to MCA 82-4-232(6)(h) are in accordance with SMCRA and consistent with the Federal regulations. MCA 82-4-232(6)(h), which contains rules for Montana when inspecting and evaluating an operator's reclamation work for its bond release application, requires Montana to consider "among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, and the estimated cost of abating such pollution" during its evaluation of a bond release application. Through this amendment, Montana added language that also allows MDEQ to consider "[o]ther information or methods acceptable to the department, including predictive modeling, [which] may be used in conjunction with monitoring data for the purposes of evaluation and to demonstrate compliance with the approved reclamation plan."

By comparison, the Federal counterpart at 30 CFR 800.40(b)(1) requires the regulatory authority to consider in its evaluation "among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and

the estimated cost of abating such pollution.”

Montana’s proposed changes will codify Montana’s ability to consider predictive modeling, along with the already required monitoring data, in its evaluation of a bond release application. Montana is adding this rule in response to its changes in MCA 82-4-232(6)(k)(ii) and (6)(k)(iv)(A), where Montana allows an operator to demonstrate compliance with a reclamation plan through predictive modeling for soil replacement, permanent siltation ponds, and suspended solids. As required by SMCRA and the Federal regulations, a regulatory authority must consider estimated cost and pollution factors in its evaluation of a bond release application. With these revisions, Montana is similarly allowing that it consider any predictive modeling submitted by the permittee, along with other required data, when evaluating a bond release application. Thus, Montana’s proposed changes to MCA 82-4-232(6)(h) are in accordance with SMCRA and consistent with the Federal regulations.

5. MCA 82-4-232(6)(i)

Montana’s proposed changes to MCA 82-4-232(6)(i) are in accordance with SMCRA and consistent with the Federal regulations. At MCA 82-4-232(6)(i), which contains rules for MDEQ’s determination about the acceptability of an administratively complete bond release application, Montana added language that allows MDEQ to consider “[o]ther information or methods acceptable to the department, including predictive modeling, may be used in conjunction with monitoring data for the purposes of determining the acceptability of the application and demonstrating compliance with the approved reclamation plan.”

By comparison, the Federal counterpart does not have a requirement that a regulatory authority will consider the acceptability of an administratively complete bond release application, but 30 CFR 800.40(b)(1) requires the regulatory authority to consider “among other factors, the degree of difficulty to complete any remaining reclamation,

whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution” during its evaluation of a bond release application.

Montana’s proposed changes will allow MDEQ to consider predictive modeling, along with the already required monitoring data, in its evaluation of a bond release application’s acceptability. Montana is adding this requirement in response to its changes in MCA 82-4-232(6)(k)(ii) and (6)(k)(iv)(A), where Montana allows an operator to demonstrate compliance with a reclamation plan through predictive modeling for soil replacement, permanent siltation ponds, and suspended solids. As required by SMCRA and the Federal regulations, a regulatory authority must consider estimated cost and pollution factors in its evaluation of a bond release application. Similarly, Montana is required to consider any predictive modeling submitted, which would be estimated cost or future pollution data, and monitoring data when evaluating a bond release application’s acceptability. Thus, Montana’s proposed changes to MCA 82-4-232(6)(i) are in accordance with SMCRA and consistent with the Federal regulations.

6. MCA 82-4-232(6)(k)(ii)

Montana’s proposed changes to 82-4-232(6)(k)(ii) are in accordance with SMCRA and consistent with the Federal regulations. At MCA 82-4-232(6)(k)(ii), which contains requirements for releasing the portion of the performance bond related to soil replacement and permanent silt dams, Montana added language that allows “[o]ther information or methods acceptable to the department, including predictive modeling, may be used in conjunction with monitoring data for the purposes of determining soil replacement costs or silt dam maintenance and demonstrating compliance with the approved reclamation plan.”

By comparison, the Federal counterpart at 30 CFR 800.40(c)(1) and (2) do not specifically mention methods for demonstrating compliance with the approved

reclamation plan for soil replacement and permanent silt dams. And while the relevant portion of SMCRA does not mention specific methods for demonstrating compliance with the approved reclamation plan, it does require that “[s]uch evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution.” 30 U.S.C. 1269(b).

Predictive modeling would be an additional tool that a permittee and MDEQ could use to evaluate future costs and ongoing pollution. Montana, in line with SMCRA and the Federal regulations, still requires an operator to submit monitoring data to demonstrate compliance with soil replacement and permanent silt dams, but this proposed change will allow a permittee in Montana to submit predictive modeling along with required monitoring data to demonstrate soil replacement costs and silt dam maintenance. Thus, Montana’s proposed changes to MCA 82-4-232(6)(k)(ii) are in accordance with SMCRA and consistent with the Federal regulations.

7. MCA 82-4-232(6)(k)(iv)(A)

Montana’s proposed changes to MCA 82-4-232(6)(k)(iv)(A) are in accordance with SMCRA and consistent with the Federal regulations. At MCA 82-4-232(6)(k)(iv)(A), which contains requirements for MDEQ to retain a portion of the performance bond to satisfy remaining permit conditions for suspended solids and associated runoff, Montana added language that allows MDEQ to determine whether an operation is contributing suspended solids in excess of MCA 82-4-231(10)(k) of the MCA “as demonstrated by either sediment sampling or predictive modeling as approved by the department.”

By comparison, the Federal counterpart at 30 CFR 800.40(c)(2) does not specifically mention methods for demonstrating compliance with the approved

reclamation plan for suspended solids and associated runoff. And while the relevant portion of SMCRA does not mention specific methods for demonstrating compliance with the approved reclamation plan, it does require that “[s]uch evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution.” 30 U.S.C. 1269(b).

MDEQ would still have to accurately evaluate future costs and ongoing pollution; this change just provides MDEQ with an additional tool for permittees and MDEQ to use to assist with this evaluation. Montana, in line with SMCRA and the Federal regulations, still requires a permittee submitting monitoring data to demonstrate compliance with suspended solids requirements, but this proposed change allows an operator to submit predictive modeling along with required monitoring data to demonstrate a plan for future suspended solid issues. Thus, Montana’s proposed changes to 82-4-232(6)(k)(iv) are in accordance with SMCRA and consistent with the Federal regulations.

B. Sections 2, 3, and 4 of HB 616

HB 616 also added contingencies that are not codified into the MCA but that affect the amended parts of the MCA.

1. Section 2. Severability.

Section 2 of HB 616 states that if any part of HB 616 is found invalid, the remainder of the bill that is found valid will be severable from the invalid part and remain in effect. While this is legislative language and not part of Montana’s surface mining program, we note that the Federal regulation at 30 CFR 732.17(h)(7) requires the Director to consider all relevant information, using the criteria set forth in 30 CFR 732.15, to approve or disapprove the amendment. Regardless of this clause, the Director may approve all or parts of an amendment that are in accordance with SMCRA and

consistent with the Federal regulations.

2. *Section 3. Contingent voidness.*

Section 3 of HB 616 states that if the Secretary of the Interior disapproves of any provision of HB 616 under 30 CFR part 732, then that portion of the bill is void.

Furthermore, MDEQ is required to notify the code commissioner of any disapproval within 15 days of the effective date of disapproval. Notwithstanding HB 616, the Federal regulations provide that the OSM Director has the authority to approve or disapprove all or part of a proposed amendment to a State program. 30 CFR 732.17(h)(7). Any program amendment or part of a program amendment disapproved by the OSM Director would be void and would not become part of Montana's approved program.

3. *Section 4: Effective date.*

Section 4 of HB 616 states that its provisions are "effective on passage and approval." Section 4 of HB 616 does not specify who is providing the "approval" that triggers the effective date. SMCRA and the Federal regulations state that no change to law or programs can take effect for purposes of a State program until the amendment is approved by the Director. 30 CFR 732.17(g). The Federal regulations further specify that all decisions approving or not approving a State program amendment must be published in the *Federal Register*. 30 CFR 732.17(h)(12). The Administrative Procedure Act (5 U.S.C. 553) requires that rulemakings become effective at least 30 days after publication of the final rule, unless the agency demonstrates good cause. Thus, the OSM Director's approval is effective 30 days after the publication of this notice.

By looking at the text of HB 616 preceding Section 4, OSM interprets the term "approval" to mean the effective date of the approval by the OSM Director. Section 2 speaks to the need for Secretarial approval but provides that if a provision is disapproved, that portion of the HB 616 is severed from the approved portions of the bill. In Section 3, HB 616 states that any provision of HB 616 that the Secretary of the Interior

“disapprov[es]” shall be void. Taken together, it is appropriate to read “approval” as used in Section 4 of HB 616 as referring to action taken consistent with the regulatory review and approval process by the Secretary of the Interior, as delegated to the OSM Director. This interpretation is also consistent with 30 CFR 732.17(g), which refers to approval by the Director of OSM and states that “[n]o such change to [state] laws or regulations shall take effect for purposes of a State program until approved as an amendment.” Thus, OSM interprets Section 4 in a way that is both supported by the surrounding statutory text of HB 616 and leads to consistency with SMCRA.

Notwithstanding OSM’s interpretation, should the drafters or implementers of HB 616 interpret Section 4 as becoming effective upon approval by an entity other than the Director, that interpretation would conflict with SMCRA and the Federal regulations. No change to State laws or programs can be implemented or become effective before the effective date of the approval by the Director. 30 CFR 732.17(g). Thus, the effective date of HB 616 is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

IV. Summary and Disposition of Comments

OSM asked for public comments on the amendment during a public comment period that ended on September 3, 2025. OSM received seven written comments during the comment period. (Administrative Record No. MT-047-08 through MT-047-14). To view comments in full, visit <https://www.regulations.gov/>.

Public Comments

Comment: One commenter urged OSM to deny the amendment because it does not limit the types or methods for which predictive modeling can be used, which could incentivize mining companies to use predictive models that are skewed and inaccurate.

OSM Response: OSM disagrees with the commenter. While the proposed rule does not give explicit instructions for modeling types or methods, Montana has limited predictive

models to data for soil replacement and permanent siltation ponds under MCA 82-4-232(6)(k)(ii) and suspended solids and associated run-off under MCA 82-4-232(6)(k)(iv)(A). As technology advances, predictive modeling methods will likely adapt and change. Language in the MCA that unduly restricts the types and methods of predictive modeling allowed could prevent operators from employing newer and more accurate modeling. Moreover, predictive modeling does not override MDEQ's duty to demonstrate compliance and accurately evaluate future costs and ongoing pollution; predictive modeling is simply another tool for MDEQ to consider when evaluating bond release applications and reclamation plans. If MDEQ has concerns about the quality of the model, those concerns would factor into its determination on bond release. For further information, please see our full discussions on these topics in Section III(A)(6)&(7).

Comment: One commenter opined that OSM should deny the amendment because it is contradictory that a predictive model would be used in the “description of results achieved” in a bond release application. Furthermore, they stated that Montana should be more clear in its proposed rules that any use of predictive modeling does not exempt mine operators from their responsibility to oversee actual, demonstrated, on-the-ground reclamation.

OSM Response: OSM disagrees with the commenter. The release of a performance bond requires a permittee to submit reclamation results they have achieved but predictive data is often important as well. Bond releases go through multiple stages, with each stage covering different types of reclamation. Especially in the earlier stages of bond release, it is important to calculate potential costs of future reclamation work, such as estimating the cost of replacing soil or the cost to re-vegetate the land. SMCRA requires that a regulatory authority “shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and

the estimated cost of abating such pollution.” 30 U.S.C. 1269(b). Through this amendment, Montana will allow operators to present MDEQ with predictive models to provide data on estimated costs for soil replacement and permanent siltation structures, as well as predict the likelihood of pollution related to suspended solids. This future looking data collection is consistent with SMCRA and the Federal regulations and does not eliminate or replace the requirements that permittees are already required to submit, such as required monitoring data. Please see our full discussion of this topic in Section III(A)(3).

Comment: One commenter opined that if predictive models are to be used in the bond release application, the models should be subject to the public review process, be made available to the public upon request, and there should be a codified process in the event the predictive model is found to be unsatisfactory.

OSM Response: Montana’s revisions to MCA 82-4-232(6)(a)(i) require the predictive models to be submitted with the bond release application, which is subject to the public review process. The operator is also required to submit a public notice of the proposed bond release, which must include “a description of results achieved.” If an operator is using a predictive model to show results achieved, that fact must be included in the public notice. Furthermore, any comments or concerns the public has with the predictive model can be addressed through the public participation process established for bond release applications at MCA 82-4-232(6)(d). Please see our full discussion of this topic in Section III(A)(1).

Comment: Multiple commenters opined that they supported the amendment because it modernizes the reclamation process, improves accuracy of data used in reclamation decisions, and gives all stakeholders greater confidence that reclamation will be completed and successful. Furthermore, they opined that data from predictive models creates a more defensible decision-making process for bond releases, which at times are

contentious decisions that go under a great deal of scrutiny.

OSM Response: OSM agrees with the commenters that Montana's proposed use of predictive modeling will offer another tool upon which MDEQ can rely to make its bond release decisions. Please see our full discussion on this topic in Section III(A).

Comment: Multiple commenters urged OSM to approve the amendment because it retains SMCRA and Federal requirements that an operation must prove it has successfully reclaimed a mining operation with monitoring data while allowing a permittee to submit supplemental information. The predictive models would be an additional tool an operation has in providing information for bond release applications.

OSM Response: OSM agrees with the commenters that Montana's amendment retains its SMCRA and Federal requirements and the additional option of predictive models is consistent with said requirements. Please see our full discussion on this topic in Section III(A).

Comment: Multiple commenters stated that OSM should approve the amendment because predictive modeling is already widely used by Federal agencies, including OSM, who use various predictive models to "assess or optimize remediation or reclamation activities." The commenters argued that Montana adopting predictive models similar to what OSM already uses in its Federal program will ensure that Montana will be making bond release decisions with more reliable data.

OSM Response: OSM uses various predictive models in our bond reclamation assessments, and OSM agrees with the commenter that Montana would be consistent with SMCRA and the Federal regulations by adopting the predictive modeling proposed here. While SMCRA and the Federal regulations do not specifically mention methods for demonstrating compliance with the approved reclamation plan for suspended solids and associated runoff, SMCRA does require that "[s]uch evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether

pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution.” 30 U.S.C. 1269(b). Data from predictive modeling aids regulators in making these determinations. Please see our full discussion on this topic in Section III(A)(7).

Comment: Multiple commenters stated that OSM should approve the amendment because it is in line with SMCRA and the Federal regulations, while also following SMCRA’s directive to tailor state programs to local environmental conditions and to use the best scientific tools available.

OSM Response: OSM agrees with the commenter, Montana’s amendment is consistent with SMCRA and the Federal regulations while also creating an additional tool that will allow Montana to collect supplemental data in areas it deems beneficial to its programmatic needs.

Comment: The sponsor of HB 616, Montana State Representative Steve Gist, stated that the proposed these changes in response to the time consuming and costly process of Montana’s current procedures for sediment sampling. Due to how large and vast coal mines and neighboring drainage basins are in Montana, Representative Gist opined it was practically impossible to gather suspended solids data consistently after each runoff event, and sampling data for individual locations may be spotty or incomplete at times. Representative Gist stated that HB 616 would allow a permittee and Montana regulatory authority to gather representative data and use a computer model to simulate the postmining sediment loads for the entire drainage basin, which he claimed is a far more efficient process that would reduce costs associated with sampling. (Administrative Record No. MT-047-12).

OSM Response: OSM thanks Montana State Representative Gist for providing further insight into this proposed change to the Montana program. OSM agrees that predictive modeling can, if done correctly, offer a new sediment sampling process that is both less

expensive and as accurate as traditional sampling methods. Please note that the operator is still responsible for providing MDEQ with data that allows MDEQ to accurately evaluate future costs and ongoing pollution; this change only provides MDEQ with an additional tool for permittees and MDEQ to use to assist with this evaluation and all other previously required data, such as monitoring data, are still required. Please see our full discussion of this topic in Section III(A)(7).

Comment: One commenter stated that OSM should approve the amendment because it reaffirms the national priority of bolstering domestic energy and mineral production.

They also stated that this amendment aligns with the following Executive Orders:

Unleashing American Energy (Jan. 20, 2025), *Immediate Measures to Increase American Mineral Production* (Mar. 20, 2025), and *Reinvigorating America's Beautiful Clean Coal Industry* (Apr. 8, 2025).

OSM Response: OSM approves state program amendments in line with requirements set forth by SMCRA and 30 CFR 732.17, and OSM found Montana's amendment to be in accordance with SMCRA and consistent with the Federal regulations. OSM does agree with the commenters that Montana's proposed amendment also aligns with the Executive Orders the commenters listed above.

Comment: One commenter stated that OSM should approve the amendment because SMCRA does not limit the information that may be submitted for a bond release application. Furthermore, they stated that SMCRA at 30 U.S.C. 1269(b) does specify that a regulatory agency shall consider the probability of future pollution and estimated costs with abating such pollution, and the predictive models that Montana is proposing would provide the data necessary for the regulatory authority to make that determination.

OSM Response: OSM agrees with the commenter, SMCRA does not discuss the type of data that may be submitted in a bond release application, but it does direct OSM and the states to consider the probability of future costs and pollution. OSM also agrees that

Montana's proposed use of predictive modeling will provide data that will help Montana better determine future pollution and estimated costs. Please see our full discussion on this topic in Section III(A)(3).

Federal Agency Comments

On September 10, 2025, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies that have an actual or potential interest in the Montana program (Administrative Record No. MT-047-04). We did not receive any comments in return.

EPA Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the CWA (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (43 U.S.C. 7401 *et seq.*). This amendment does not relate to air or water quality standards and thus does not require a written concurrence from the EPA. Even so, on September 10, 2025, under 30 CFR 732.17(h)(11)(i), we sent a letter requesting comments from the EPA on the amendment (Administrative Record No. MT-047-xx). The EPA did not provide any comments for this amendment.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 10, 2025, we requested comments on the amendment (Administrative Record No. MT-047-04). Montana SHPO and the ACHP did not provide a comment.

V. OSM's Decision

Based on the above findings, we are approving Montana's proposed amendment (MT-047-FOR) sent to us on May 6, 2026 (Administrative Record No. MT-047-01).

To implement this decision, we are amending the Federal regulations at 30 CFR

part 926, which codify decisions concerning the Montana program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires that a State program must have rules and regulations that are in accordance with SMCRA and consistent with Federal regulations.

VI. Procedural Determinations

Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 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 amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, supplements Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review proposed regulations to eliminate drafting errors and ambiguity; that the agency write its regulations to minimize litigation; and that the

agency's regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program amendment that Montana drafted.

Executive Order 13132 - Federalism

This rule has potential Federalism implications, as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States. Montana, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the state level. This rule approves an amendment to the Montana program submitted and drafted by the State and, thus, is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined that, with the exception of the Crow Tribe's “Ceded Strip” which through a memorandum of understanding the Department of the Interior and Montana agreed to coordinate the administration of applicable surface mining requirements, no Indian lands, as defined under SMCRA, are implicated by this rule. But this State program amendment may have substantial direct effects on 20 federally recognized Tribes because of the potential implications for the Tribe or Tribal members,

Tribal treaty rights, reserved rights, trust resources, or ancestral lands. Therefore, on August 4, 2025, we sent invitation letters to consult to these 20 Tribes (Administrative Record No. MT-047-07). We did not receive any comments or requests for Tribal Consultation.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking 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 a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), a State program amendment is a not major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (43 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

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 on corresponding 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 corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), 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; and (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 on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 926

Intergovernmental Relations, Surface mining, Underground mining.

Marcelo Calle,
Acting Regional Director,
Unified Regions, 5, 7-11

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926 – MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Amend § 926.15 by adding an entry for “May 6, 2025” at the end of the table to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

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Original amendment submission date	Date of final publication	Citation/description
* * * * *		
May 6, 2025	<u>[Insert date of publication in the Federal Register]</u>	Mont. Code. Ann. 82-4-232 <i>Area mining required – bond – alternative plan – Predictive modeling - Approved</i>

[FR Doc. 2026-14245 Filed: 7/14/2026 8:45 am; Publication Date: 7/15/2026]